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Issued in Washington, DC, on April 2, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–8432 Filed 4–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Wabtec Railway Electronics

[Docket Number FRA–2001–9270]

Wabtec Railway Electronics (Wabtec) seeks a permanent waiver of compliance from certain provisions of the *Railroad Power Brake and Drawbars* regulations, 49 CFR 232, regarding two-way end-of-train devices. Specifically, section 232.23(f)(2) requires:

> The rear unit batteries shall be sufficiently charged at the initial terminal or other points where the device is installed and throughout the train's trip to ensure that the end-of-train device will remain operative until the train reaches its destination.

Wabtec has recently developed an air generator for its TrainLink II End-of-Train units and plans to market the product under the trade name of TrainLink II–ATX. Wabtec states that this new product eliminates the need for separate battery packs by using brake pipe pressure to drive an air turbine and associated electrical generator. The generator provides sufficient electrical power for the EOT to perform all EOT functions and to charge a small backup battery with brake pipe pressure as low as 55 psi. Below 55 psi, the backup battery provides power for at least 5 hours from a fully charged condition. Air flow to the generator is filtered for particulates and water to prevent clogging of the turbine nozzle. At 90 psi, the air flow is about 1.3 SCFM and decreases to 1.0 SCFM at 55 psi. Wabtec tested the product on a 150-car air brake test rack at their facility in Germantown, Maryland, and provided the following summarized results:

(1) With the brakes released and brake pipe pressure at 90 psi, air flow from the generator causes a 0.2-psi pressure drop at the rear of the train. This incremental 0.2-psi drop is the same regardless of the amount of gradient caused by other leaks. For example, a 15-psi gradient was simulated by introducing a leak at car 145. When the air motor is cut-in, the pressure at car 150 drops by an additional 0.2 psi.

(2) Although Wabtec believes a sudden blockage of the air nozzle is unlikely, tests were performed to ensure that a sudden drop in air flow to the turbine would not cause the brakes to release. With the air generator cut-in, no additional simulated leaks, and brakes released at 90 psi, a minimum application was initiated. Pressure was monitored every 20 cars along the rack. Thirty seconds after the minimum application was initiated, the air motor was cut-out. Brakes did not release.

(3) The test in item 2 was repeated with delay times of 60 and 90 seconds after the minimum brake application was initiated. The brakes did not release in any case.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9270) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 3 Washington, DC 20590–0001. Communications received within 35 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on April 2, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–8435 Filed 4–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 24]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Monday, April 23, 2001.

ADDRESSES: The meeting of the RSAC will be held at the Mayflower, a Renaissance Hotel, in the Colonial Room, 1127 Connecticut Avenue, NW., Washington, DC 20036, (202) 347–2000. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Paolella, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Monday, April 23, 2001. The meeting of the RSAC will be held at the Mayflower Hotel in the Colonial Room, 1127 Connecticut Avenue, NW., Washington, DC 20036,

(202) 347–7000. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will be briefed on the current status of activities of RSAC working groups and task forces responsible for carrying out tasks the RSAC has accepted involving blue signal protection, cab working conditions, and the definition of reportable "train accident."

There will be discussion about Training and Qualification of Safety Critical personnel, a presentation of a proposed task to conform the accident and incident regulations to new Occupational Safety and Health Act requirements and to make necessary revisions to the reporting guide, and a review and discussion of pending rule making petitions and pending tasks.

Informational status briefings concerning the Safety Assurance Compliance Program efforts and the new RSAC website will be presented.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on March 25, 2001.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 01–8436 Filed 4–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 25]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect the current status of working group activities.

FOR FURTHER INFORMATION CONTACT: Trish Paolella or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on December 17, 1999 (64 FR 70756). The sixteenth full Committee meeting was held December 7, 2000, at the Wyndham Hotel in the Vista Ballroom in Washington, DC.

Since its first meeting in April of 1996, the RSAC has accepted sixteen tasks. Status for each of the tasks is provided below:

Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule was published on 1/17/01 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). In addition, the AAR has requested that OMB re-open the Paperwork approval on the rule. *Contact:* Thomas Hermann (202) 493–6036.

Task 96–2—Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August. The GRMS final rule amendment was published 1/10/01 (66 FR 1894) and Roadway Maintenance Machines NPRM was published 1/10/01 (66 FR 1930). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001 in accordance with the Regulatory Review Plan (66 FR 9676). *Contact:* Al MacDowell (202) 493–6236.

Task 96–3—Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. *Contact:* Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact:* Grady Cothen (202) 493–6302.

Task 96–5—Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). *Contact:* George Scerbo (202) 493–6349.

Task 96–6—Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR

Talking Points ----------

RSAC Update - General
Tasks Summary
Regulatory Summary

Membership ----------

Agenda ----------

Accident/Incident Reporting Conforming Task
Cab Working Conditions
Blue Signal
Pending Rulemaking Petitions
Safety Assurance & Compliance Program (SACP)

Other ----------

Handouts
Calendar

Minutes ----------

RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)

RSAC Initiatives Update as of April 12, 2001

The **RSAC** will hold its seventeenth full Committee meeting on April 23, 2001. Since its first meeting in April of 1996, the RSAC has accepted sixteen tasks. The following is a review of RSAC initiatives to date:

Task 96-1: Revision of Freight Power Brake Regulations - The 1992 Rail Safety Enforcement and Review Act of 1992 required FRA to revise the power brake regulations. FRA did complete the portion of the rule involving two-way end-of train devices (EOTs) and it became effective on July 1, 1997. FRA published a Notice of Proposed Rulemaking (NPRM) on September 16, 1994, and conducted six days of public hearings. Additional options were requested from passenger interests and freight interests. Passenger power brake provisions were included in the Passenger Equipment Standards NPRM published September 23, 1997, and a final rule is in preparation. Revision of the freight power brake regulations was tasked to RSAC on April 1, 1996. After a period of over a year of intense efforts, a consensus between railroad labor and management could not be reached on several contentious issues. FRA formally withdrew the freight power brake task at the June 24, 1997, RSAC meeting. FRA published an NPRM on September 9, 1998, reflective of what FRA has learned through the collaborative process. Public hearings were conducted on October 26, 1998, in Kansas City, Missouri, and on November 13, 1998, in Washington, DC. A technical conference was held in Walnut Creek, California, November 23-24, 1998. The final date for the submission of written comments was extended to March 1, 1999. A public meeting to discuss FRA's collection of inspection data was conducted on May 27, 1999. The final rule was published in the Federal Register on January 17, 2001 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). FRA is reviewing petitions for reconsideration of the final rule. Contact: Thomas Hermann (202) 493-6036.

Task 96-2: Revision of Track Safety Standards - The 1992 safety authorization act required FRA to issue revised track rules. FRA published an Advanced Notice of Proposed Rulemaking (ANPRM) on November 6, 1992, and conducted workshops during the period January-March 1993. The RSAC accepted the task of preparing an NPRM on April 2, 1996. In November 1996, the RSAC voted to recommend issuance of the NPRM and FRA published an NPRM on July 3, 1997. A public hearing was held on September 4, 1997, with comments due by December 22, 1997. The final rule was published on June 22, 1998. The effective date of the rule was September 21, 1998.

Although the subject of much discussion, the Track Safety Working Group could not reach consensus about how the revised Track Safety Standards should address GRMS technology. The RSAC therefore recommended that a small task group continue evaluating the possibility of developing GRMS standards for broader application within the industry. The task group drafted a standard providing for the use of this technology within the industry and FRA has prepared an amendment to the final track rule providing for the use of GRMS technology. A package containing the proposed GRMS amendment and the proposed Safety Standards for Roadway Maintenance Machines was prepared and sent to the Track Working Group for a mail ballot. Following the Track Working Group ballot, additional deliberations were conducted to resolve the remaining issues. The GRMS final rule amendment was forwarded to the RSAC for a mail ballot on July 24, 2000 and approved by the full RSAC in the mail ballot during August. The final rule amendment was published January 10, 2001 (66 FR 1894). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001, in accordance with the Regulatory Review Plan (66 FR 9676). Contact: Al MacDowell (202) 493-6236.

Task 96-3: Railroad Communications - FRA, in submitting a report to Congress on Railroad Communications and Train Control on July 13, 1994, noted the need to revise existing Federal standards for radio communications in concert with railroads and employee representatives. The RSAC accepted the task of preparing an NPRM, including consideration of communication capabilities required in railroad operations, on April 1, 1996. The RSAC voted to recommend issuance of an NPRM. The NPRM was published on June 11, 1997. A final rule was published on September 4, 1998, and became effective on January 2, 1999 (63 FR 47182). Contact: Gene Cox: (202) 493-6319.

Task 96-4: Tourist, Excursion, Scenic and Historic Service - The Swift Railroad Development Act of 1994 required FRA to submit a report to Congress regarding FRA's actions to recognize the unique factors associated with these generally small passenger operations that often utilize historic equipment. The report was submitted to the Congress on June 10, 1996. The RSAC authorized formation of a Working group on Tourist and Historic Railroads on April 1, 1996, to promote the safe operation of tourist and historic rail operations. The Working group monitored and assisted completion of the steam locomotive regulations task and will continue its oversight of task force activities, including the possible development of requirements for the training of steam locomotive operators and maintenance personnel. Planned future activities involve the review of other regulations, such as track safety, emergency preparedness, and passenger

equipment safety standards for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen: (202) 493-6302.

Task 96-5: Revision of Steam-Powered Locomotive Inspection Standards - A committee of steam locomotive experts from tourist and historic railroads have sought a partnership with FRA to revise the steam locomotive regulations. Revision of the regulations was tasked to the RSAC on July 24, 1996. The Tourist and Historic Railroads Working Group created a Steam Task Force to address this task. The full Committee voted to recommend issuance of an NPRM. The NPRM was published in the Federal Register on September 25, 1998. A public hearing was held on February 4, 1999. The Task Force's recommendations in response to the comments received were accepted by the Working group and the full Committee voted to incorporate the recommendations in the final rule. The final rule was published on November 17, 1999, and became effective January 18, 2000 (64 FR 62828). Contact: George Scerbo: (202) 493-6349.

Task 96-6: Revision of Qualification and Certification of Locomotive Engineer Regulations - The final rule for locomotive engineer certification became effective in 1991, but certain issues were left unresolved. Experience under the rule also raised additional issues. An interim final rule amendment was published on October 12, 1995. The RSAC accepted a task to revise the regulations on October 31, 1996. The full Committee voted at the May 14, 1998, meeting to recommend issuance of the NPRM forwarded by the Working group. An NPRM was published in the Federal Register on September 22, 1998. The Working group has met to resolve issues presented in the public comments. At the January 28, 1999, meeting, the RSAC recommended issuance of a final rule with the Working group modifications. The final rule was published on November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493-6318.

Task 96-7: Safety Standards for Roadway Maintenance Machines (On-Track Equipment) - During deliberations of the Working Group on Track Safety Standards, the issue of proposing standards relating to the safety of persons riding or operating maintenance-of-way equipment was raised. On October 31, 1996, the RSAC accepted a task of drafting proposed rules for safety of this equipment. A Task Force was formed to address the issue, and the Task Force reached a consensus agreement in principle on what should be included in the proposed rule. A proposed rule based on the working group consensus was forwarded to the full RSAC for a mail ballot on July 24, 2000. The NPRM was approved by the full RSAC in the mail ballot during August and was published January 10, 2001 (66 FR 1930). Contact: Al MacDowell: (202) 493-6236.

Task 96-8: Locomotive Crashworthiness and Working Conditions Planning Task - The Rail Safety Enforcement and Review Act of 1992 required FRA to

conduct a proceeding regarding locomotive crashworthiness and working conditions and issue regulations or submit a report. FRA conducted research, outreach, and a survey of locomotive conditions and finalized a report to the Congress entitled *Locomotive Crashworthiness & Working Conditions,* transmitted by letter of September 18, 1996. The report conveyed data and information developed by FRA, closed out those areas of investigation for which further action is not warranted, and defined issues that should be pursued further in concert with industry parties, either for voluntary or regulatory action. The RSAC accepted a planning task on October 31, 1996, to evaluate the need for action responsive to recommendations contained in the report. A Planning Group reviewed the report and grouped issues into categories, and prepared drafts of the task statements. FRA presented the task statements addressing locomotive crashworthiness and cab working conditions to the RSAC on June 24, 1997.

Task 97-1: Locomotive Crashworthiness - On June 24, 1997, the RSAC voted to accept a task addressing locomotive crashworthiness issues. The Working Group on Locomotive Crashworthiness established a Task Force on engineering issues that reviewed collision history and design options. The Working group reviewed the results of research that was commissioned and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. A team reviewing collision data for use in the regulatory evaluation completed its work in September. FRA is preparing a draft NPRM for consideration of the working group. Contact: Sean Mehrvazi: (202) - 493-6237.

Task 97-2: Locomotive Cab Working Conditions - On June 24, 1997, the RSAC voted to accept a task addressing cab working conditions issues. The Working Group on Locomotive Cab Working Conditions established task forces on noise and temperature. The full working group met several times to develop recommendations for locomotive sanitation standards.
Sanitation. The working group developed a draft sanitation NPRM, which was transmitted to full committee members and approved at the December 7, 2000, RSAC meeting. The NPRM was published January 2, 2001 (66 FR 136).
Noise. The Cab Working Group met in October and November of 2000 and in April of 2001 in an effort to complete development of a noise exposure standard, reaching tentative agreement on most of the significant issues. FRA circulated draft rule text for the April meeting, and the group incorporated refinements and substantive changes to that language during the April meeting.
Temperature. The working group has also considered issues related to cab temperature for which no agreement could be reached. Contact: Brenda Hattery (202) 493-6326.

Task 97-3: Revision of Event Recorder Requirements - In issuing final rules for event recorders which became effective May 5, 1995, FRA noted the need to provide more refined technical standards. The National Transportation Safety Board (NTSB) noted the loss of data from event recorders in several accidents due to fire, water and mechanical damage. NTSB proposed performance standards and agreed to serve as co-chair for an industry/government working group that would define technical standards for next-generation railroad event recorders. FRA conducted a meeting of an informal working group comprised of railroad labor and management and co-chaired by NTSB on December 7, 1995, to consider development of technical standards. At the July 24-25, 1996, RSAC meeting, the Association of American Railroads (AAR) agreed to continue the inquiry and on November 1, 1996, reported the status of work on proposed industry standards to the RSAC. On March 5, 1997, the NTSB issued recommendations regarding testing and maintenance of event recorders as a result of finding in the investigation of an accident on February 1, 1996, at Cajon Pass, California. On March 24, 1997, the RSAC indicated its desire to receive a task to consider the NTSB recommendations with respect to crash survivability, testing and maintenance. A task was presented to, and accepted by, the RSAC on June 24, 1997. The Working Group on Event Recorders was formed and a Task Force established. The Working group and Task Force have conducted meetings and a draft proposed rule is being reviewed. Contact: Ed Pritchard (202) 493-6247.

Tasks 97-4, 97-5 and 97-6: Positive Train Control (PTC) Systems - On September 30, 1997, the RSAC accepted three tasks involving defining PTC functionalities, describing available technologies, evaluating costs and benefit of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. Accomplishments of the PTC Working Group to date include the following:

> **Report to the Administrator / Report to the Congress:** The Swift Rail Development Act of 1994 required FRA to submit a status report on the implementation of positive train control as a follow-up to the July 1994 report entitled *Railroad Communications and Train Control.* The Data and Implementation Task Force of the PTC Working Group prepared a Report to the Administrator entitled *Implementation of Positive Train Control Systems* which was approved by the full committee on September 8, 1999. This RSAC report has been widely disseminated, and FRA has referred to its findings and recommendations in responses to questions from the Congress. FRA obtained clearance of a letter report to the Congress which enclosed the RSAC PTC report, and that letter report was signed by the Administrator on May 17, 2000.

Notice of Proposed Rulemaking for Performance Standards: The Standards Task Force prepared an NPRM on performance standards for processor-based signal and train control systems. The Task Force held a final meeting on the NPRM on June 28, and the full PTC Working Group considered and approved the NPRM on June 29, with amendments. The PTC NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. FRA submitted the NPRM for review and clearance within the Executive Branch.

The working group also established teams dealing with PTC-related operating rules and human factors issues, as well as a team assisting in the development of an Axiomatic Safety-Critical Assessment Process (ASCAP) designed to provide a risk assessment tool kit for use in applying new performance-based standards. The operating rules team completed their task in April 2000, and their work was approved by the PTC Working Group at its last meeting on June 29.

The most recent meetings of the PTC Working Group were held on November 9, 2000, and March 28, 2001, to discuss reports from the Human Factors and ASCAP teams, and from the manager of the North American Joint PTC Project. Monitoring of implementation continues. Contact: Grady Cothen (202) 493-6302.

Task 97-7: Definition of Reportable "Train Accident" - FRA identified the need to comprehensively revise the regulations governing accident/incident reporting, which had not been revised since 1974. FRA issued an NPRM on August 19, 1994, and a final rule on May 30, 1996. Technical amendments were published on November 22, 1996, and the FRA Administrator signed final rule amendments on December 16, 1996. The final rule became effective on January 1, 1997. On June 24, 1997, the RSAC reviewed a request by an RSAC member to clarify the means used by railroads to estimate railroad property damage and improve the consistency of reporting. The RSAC accepted the task on September 30, 1997, limited to determination of damages qualifying an event as a reportable train accident. A working group was formed, held its initial meeting in February 1999, and has been conducting meetings to address this task. The working group has designed a survey form to collect specific data about damages to railroad equipment. The survey started on August 1, 2000 and will end January 31, 2001. The survey is voluntary; most of the large freight railroads and four passenger railroads are participating. A complete statistical analysis will be done at the conclusion of the survey to determine if a method can be used to calculate property damages. The analysis of the pilot survey data by a statistician is expected to take two months to complete, with a report to follow by the last week of April 2001. A meeting is scheduled for May 21-23, 2001, to review the report. Contact: Robert Finkelstein (202) 493-6280..

Task 00-1: Blue Signal Protection - On August 16, 1993, FRA published a final rule permitting one or more utility employees to associate themselves with a train crew for the purpose of performing normal operating functions that require employees to go on, under or between rolling stock, without use of blue signal protection (which is ordinarily appropriate for mechanical duties). During the proceeding it was noted that rules for locomotive engineers working alone were not clearly defined. FRA published a final rule amendment governing single engineers working alone on March 1, 1995, but granted a requested suspension of the amendment on June 9, 1995, pending development of additional facts. Since that time, additional blue signal issues have continued to emerge, including application of the requirements to contractors performing the subject functions on railroad property. On October 31, 1996, the RSAC advised FRA that this project should not be proposed for early tasking, given conflicting demands on the resources of member organizations. RSAC accepted the task at the January 28, 2000 full Committee meeting. A working group has been formed and held its first meeting on October 16-18, 2000 in Washington, DC. The second meeting was held March 19-21, 2001. The next two meetings of the working group are on May 1-3 in Atlanta GA, and June 19-21 in Orlando, FL. Contact: Doug Taylor (202) 493-6255.

(202) 347–7000. All times noted are Eastern Standard Time.

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Issued in Washington, DC on March 25, 2001.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 01–8436 Filed 4–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 25]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect the current status of working group activities.

FOR FURTHER INFORMATION CONTACT: Trish Paolella or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

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Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule was published on 1/17/01 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). In addition, the AAR has requested that OMB re-open the Paperwork approval on the rule. *Contact:* Thomas Hermann (202) 493–6036.

Task 96–2—Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August. The GRMS final rule amendment was published 1/10/01 (66 FR 1894) and Roadway Maintenance Machines NPRM was published 1/10/01 (66 FR 1930). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001 in accordance with the Regulatory Review Plan (66 FR 9676). *Contact:* Al MacDowell (202) 493–6236.

Task 96–3—Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. *Contact:* Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact:* Grady Cothen (202) 493–6302.

Task 96–5—Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). *Contact:* George Scerbo (202) 493–6349.

Task 96–6—Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR

60966). *Contact:* John Conklin (202) 493–6318.

Task 96–7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August. The NPRM was published 1/10/01 (66 FR 1930). *Contact:* Al MacDowell (202) 493–6236.

Task 96–8—This Planning Task Evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Task 97–1 and 97–2.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1977. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. An NPRM is being prepared, with the Working Group meeting to review the draft. *Contact:* Sean Mehrvazi (202) 493–6237.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997. A draft sanitation NPRM was circulated to the Working Group on Cab Working Conditions with ballot requested by 11/3/00. The NPRM on sanitation was discussed during the full RSAC meeting on September 14, 2000 and published 1/02/01 (66 FR 136). A public hearing is scheduled April 2, 2001, to discuss the Locomotive Sanitation Standards. A Task Force has assisted in identifying options for strengthening the occupational noise exposure standard, and the Cab Working Group met in October and November and reached tentative agreement on most of the significant issues related to the noise NPRM. The Cab Working Group has scheduled a meeting April 3–5 to discuss Noise Standards. The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. *Contact:* Brenda Hattery (202) 493–6326.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. An event Recorder Working Group and Task Force have been established and are actively meeting. A draft proposed rule is being reviewed. *Contact:* Edward Pritchard (202) 493–6247.

Task 97–4 and Task 97–5—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The Standards Task Force, formed to develop PTC standards, is developing draft recommendations for performance-based standards for processor-based signal and train control standards. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM will be published in the **Federal Register.** Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work. A meeting of the Working Group is scheduled for March 26, 2001, in Las Vegas to discuss updates on the projects. *Contact:* Grady Cothen (202) 493–6302.

Task 97–7—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group was formed to address this task and conducted their initial meeting on February 8, 1999. The working group designed a survey form to collect specific data about damages to railroad equipment. The survey started on August 1 and ended January 31, 2001. A statistical analysis, using the survey data, is currently being done to see if a method can be used to calculate property damages. The report is scheduled for completion by the last week of April, 2001. A meeting is scheduled for May 21–23, 2001 to review the report. *Contact:* Robert Finkelstein (202) 493–6280.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end markings devices (Blue Signal Protection). A working group has been formed and held its first meeting on October 16–18, 2000. A second meeting was held from February 27–March 1, 2001. The next meeting is scheduled for March 19–21, 2001. *Contact:* Doug Taylor (202) 493–6255.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on March 25, 2001.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 01–8437 Filed 4–5–01; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Union Pacific Railroad Co.

[Docket No. FRA–2001–8962]

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the two power-operated switches and 5 controlled signals, on the Mainline and Wye tracks, at the North End of Osawatomie, Kansas, milepost V334 and milepost V335, on the Coffeyville Subdivision, associated with the installation of replacement hand-operated switches.

Railroad Safety Advisory Committee (RSAC)
Tasks - Accepted as of December 7, 2000

Task 96-1 **Revision of Freight Power Brake Regulations** - Formally withdrawn 6/97. FRA is proceeding with issuance of NPRM reflective of what FRA has learned through the collaborative process.

Task 96-2 **Revision of Track Safety Standards** - To promote the safe movement of trains.

Task 96-3 **Railroad Communications** - To recommend revisions to the Radio Standards and Procedure and consider communications capability required to support emergency preparedness functions, including emergency preparedness plans for rail passenger service.

Task 96-4 **Tourist, Excursion, Scenic and Historic Service**
To ensure appropriate applicability of FRA regulations to tourist, excursion and historic railroads on and off the general rail system.

Task 96-5 **Revision of Steam-Powered Locomotive Inspection Standards**
To promote the safe operation of tourist and historic rail operations.

Task 96-6 **Revision of Qualification and Certification of Locomotive Engineer Regulations** - To promote railroad safety by improving the regulations based on additional knowledge and experience gained since the original effective date.

Task 96-7 **Safety Standards for Track Motor Vehicles and Self Propelled Roadway Equipment** - To promote the safe operation of track motor vehicles and self propelled roadway equipment.

Task 96-8 **Locomotive Crashworthiness and Working Conditions Planning Task**
To evaluate the need for action responsive to recommendations contained in the Report to Congress entitled *Locomotive Crashworthiness & Working Conditions.*

Task 97-1 **Locomotive Crashworthiness** - To promote the safe operation of trains and the survivability of locomotive crews where train incidents do occur.

Task 97-2 **Locomotive Cab Working Conditions** - To safeguard the health of locomotive crews and promote the safe operation of trains.

Task 97-3 **Revision of Event Recorder Requirements** - To enhance rail safety through appropriate revision and/or addition to existing event recorder requirements to improve accident investigation, reconstruction, and analysis

methodologies. To consider, and as appropriate act upon, National Transportation Safety Board recommendation for locomotive cab voice recorders.

Task 97-4
Task 97-5
Task 97-6

Positive Train Control Systems - To facilitate understanding of current Positive Train Control (PTC) technologies, definitions, and capabilities. To address issues regarding the feasibility of implementing fully integrated PTC systems. To facilitate implementation of software based signal and operating systems through consideration of revisions to the Rules, Standards and Instructions to address processor-based technology and communication-based operating architectures.

Task 97-7

Definition of Reportable "Train Accident" - To evaluate the current concept of a reportable "train accident" to determine whether clarification of the means used by railroads to estimate railroad property damage could improve the consistency of reporting.

Task 2000-1

Railroad Operating Practices - Blue Signal Protection of Workmen - To promote the protection of persons who work on, under, or between rolling equipment and the safety of persons applying, removing or inspecting rear end marking devices.

The following tasks were postponed:

Task 2000-2

Northeast Corridor - To promote the safe operation of passenger and freight rail service on the Northeast Corridor.

Task 2000-3

(Planning Task) **Training and Qualification of Safety-Critical Personnel** - To evaluate the adequacy of existing FRA and industry requirements and programs to train, qualify, and document the qualifications of employees and other personnel who perform safety-critical functions, recommending any additional actions that should be taken through the RSAC.

U.S. Department
of Transportation

**Federal Railroad
Administration**

Overview of the Railroad Safety Regulatory Program and Standards-Related Partnership Efforts

April 12, 2001

Legend:

ANPRM	**Advance Notice of Proposed Rulemaking**
Italics	***Indicates project has been identified for development through the Railroad Safety Advisory Committee or a similar forum for collaborative rulemaking***
NPRM	**Notice of Proposed Rulemaking**
RSAC	**Railroad Safety Advisory Committee**
SACP	**Safety Assurance and Compliance Program**

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NOTES

Centralized Docket Management System - Dockets established after October 7, 1998, are available on the DOT Centralized Docket Management System facility and can be accessed over the Internet (http://dms.dot.gov). Detailed information is available at the Web site to assist in viewing documents.

Revised Docket Filing Procedures for FRA Rulemaking and Adjudicatory Dockets - Final Rule (64 FR 70193) - This final rule amends certain FRA rules to provide accurate information to the public regarding filing requirements for FRA proceedings. The final rule is effective 2/14/00.

SUMMARY OF CONSENSUS RULEMAKING EFFORTS

Roadway Worker Safety. Consensus achieved in formal negotiated rulemaking; final rule published 12/16/96; effective 1/15/97. Denial of AAR and APTA petitions for reconsideration published 4/21/97.

Passenger Equipment Safety Standards. NPRM based on working group recommendations was published 9/23/97. Public hearing held 11/21/97. Final rule published 5/12/99 (64 FR 25540).

Passenger Train Emergency Preparedness. NPRM based on working group recommendations was published 2/24/97 with significant additions, and a notice of public hearings was published 3/6/97. Public hearings were held in Chicago on 4/4/97 and in New York City on 4/7/97. Final rule published 5/4/98 (63 FR 24630).

Railroad Safety Advisory Committee:

The sixteenth full Committee meeting was held on 12/7/00. Notice of Meeting (65 FR 69603). The next meeting is scheduled for April 23, 2001. Notice of Meeting (66 FR 18351). Since its first meeting in 1996, the RSAC has accepted sixteen tasks. Below is a review of the RSAC initiatives to date.

Last RSAC Working Group Activity Update published in Federal Register 4/6/01. (66 FR 18352).

Task No.	Subject	Status
96-1	Power Brake Regulations, freight, general revision	Working group charter extended to 1/15/97 to produce NPRM; impasse reached at 12/4/96 meeting, and subsequent efforts to renew talks were not successful. FRA withdrew task at 6/24/97 meeting. FRA published second NPRM 9/9/98 (63 FR 48294) reflective of what FRA has learned through the collaborative process. Public hearings 10/26/98 and 11/13/98; technical conference 11/23-24/98. Submission of written comments date due extended to 3/1/99. Public meeting 5/27/99 on FRA motive power and equipment database. Final rule published 1/17/01 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001, was published on February 12, 2001 (66 FR 9905). FRA is reviewing petitions for reconsideration.
96-2	Track Safety Standards, general revision	Consensus achieved; in balloting that concluded 11/21/96, RSAC voted to accept working group report and recommend NPRM. NPRM published 7/3/97; public hearing held 9/4/97; comment period closed 9/15/97. Final rule published 6/22/98; effective 9/21/98. FRA prepared an amendment to the final track rule providing for the use of Gage Restraint Measurement System technology (GRMS). Both the GRMS final rule amendment and the proposed Safety Standards for Roadway Maintenance Machines were approved by the full RSAC in a mail ballot during August. The GRMS final rule amendment published 1/10/01

		(66 FR 1894) and Roadway Maintenance Machines NPRM published 1/10/01 (66 FR 1930). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001, in accordance with the Regulatory Review Plan (66 FR 9676).
96-3	Railroad Communications (including revision of Radio Standards and Procedures)	Final meeting of working group held 1/23/97. Working group provided consensus NPRM to RSAC at 3/24/97 meeting. RSAC voted to accept the NPRM on 4/14/97. NPRM published 6/26/97. Final rule published 9/4/98 (63 FR 47182).
96-4	Tourist Railroads	Open task to address needs of tourist and historic railroads. On 4/1/96 RSAC authorized the formation of a Working Group to monitor and assist completion of the steam locomotive regulations task. Planned future activities involve review of other regulations for possible adaptation to the safety needs of tourist and historic railroads.
96-5	Steam-Powered Locomotives, revision of inspection standards	Tourist & Historic Working Group met with task force representatives 9/3/97. NPRM approved by full committee on 2/17/98. NPRM published 9/25/98 (63 FR 51404). Public hearing held 2/4/99. Task Force developed and Working Group approved recommendations in response to comments received. NPRM approved by full Committee ballot 9/29/99. Final rule published 11/17/99 (64 FR 62828). Effective 1/18/00.
96-6	Locomotive Engineer Qualification and Certification, general revision	Task accepted 10/31/96; first working group meeting held 1/7-9/97. NPRM approved by full committee 5/14/98. NPRM published 9/22/98 (63 FR 50625). Final rule published 11/8/99 (64 FR 60966).
96-7	Roadway Maintenance Machines [Track Motor Vehicle and Roadway Worker Equipment]	Task accepted 10/31/96. The NPRM and the final rule amendment on GRMS approved by full RSAC in a mail ballot in August 2000. The GRMS final rule amendment published 1/10/01(66 FR 1894) and Roadway Maintenance Machines NPRM published 1/10/01 (66 FR 1930). The GRMS final rule has been held up for 60 days to allow the incoming administration time to review the rule.
96-8	Locomotive Crashworthiness and Working Conditions (planning task)	Planning task accepted 10/31/96; planning group met 1/23/97; two task statements were accepted by the full Committee at 6/24/97 meeting [see 97-1, 97-2]. Planning task is COMPLETED.
97-1	Locomotive Crashworthiness	Task accepted 6/24/97; working group held initial meeting 9/8-9/9/97. Established task force to review collision history and design options. Working group reviewed results of research, reached agreement regarding desired technical and performance-based standards, and is currently drafting performance-based standards for freight and passenger locomotives to present to the RSAC. The Working Group also assisted in finalizing the collision data for the economic evaluation necessary to determine if the proposal will be cost beneficial. A draft NPRM will be

		circulated to the Working Group for review, and the economic evaluation will be provided as background.
97-2	Locomotive Cab Working Conditions	Task accepted 6/24/97; working group held initial meeting 9/10-11/97. The Working Group established task forces on noise and temperature. A draft sanitation NPRM was circulated to the working group for approval, with ballots requested by 11/3/00. The NPRM on Sanitation was published 1/2/01 (66 FR 136). The full working group met in October and November and reached tentative agreement on most of the significant issues related to the noise NPRM. The Cab Working Group has also considered issues related to cab temperature and is expected to consider additional issues (such as vibration) in the future. The Cab Working Group met 4/3-4/5/01 to refine recommendations to the FRA for Noise Standards. A public hearing was held 4/2/01 to discuss Locomotive Sanitation Standards, and that docket remains open through 5/1/01 for post-hearing submissions.
97-3	Event Recorders (data survivability, inspection, etc.)	Task accepted 6/24/97; working group first met 9/12/97. The Working Group and Task Force have conducted meetings and a draft NPRM is being reviewed.
97-4, 97-5, 97-6	Positive Train Control	Tasks accepted 9/30/97 and assigned to single working group. The Processor-based signal and train control system (PTC) NPRM was approved by consensus at the full RSAC meeting on 9/14/00. NPRM to be published in the Federal Register. Data and Implementation Task Force completed report on the future of PTC systems; report accepted for forwarding to FRA by full Committee vote at 9/8/99 meeting. FRA enclosed report with letter Report to Congress signed 5/17/00. The working group continues to meet to track progress toward PTC implementation. Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work. Monitoring of implementation continues. Meeting of the Working Group was held on 3/26/01 to discuss updates on projects.
97-7	Calculation of Damages for Reportable Train Accidents	Task accepted with modification 9/30/97. Working Group has been formed. Initial meeting held 2/8/99. The Working Group designed a survey form to collect data about damages to railroad equipment. The pilot survey started 8/1/00 and will end 1/31/01. A statistical analysis to be done at the end of the survey to see if a method can be used to calculate property damages. Report is expected two months after last data is collected, approximately last week of April. Meeting scheduled for 5/21-23/01.
00-1	Blue Signal Protection of Workers	Task accepted 1/28/00; working group formed. First meeting was held 10/16/00-10/18/00; the second from 2/27-3/1/01 and the third meeting held 3/19- 22/01. The fourth meeting is scheduled May 2-3 and the fifth is scheduled 6/19-6/21/01.

Accident/Incident Reporting

Summary: The Rail Safety Enforcement and Review Act barred FRA from adjusting the monetary threshold for reporting of train accidents until the methodology was revised. In addition, FRA identified the need to comprehensively revise these regulations, which had not been revised since 1974. The report of the Committee of Conference on the Department of Transportation and Related Agencies Appropriation Act, 1996, directed FRA to issue a final rule in this proceeding by 6/1/96.

History: An NPRM was issued 8/19/94, followed by public hearings and written comment. A public regulatory conference was convened 1/30-2/3/95 in an effort to resolve outstanding issues. A notice of decision to issue a supplemental NPRM was published 7/3/95, but was withdrawn in a notice published on 1/24/96.

Status: Completed. Final rule was issued 5/30/96 and published 6/18/96 (61 FR 30940). Stay requests were denied, and technical amendments were published 11/22/96 (61 FR 59368). A notice of availability of custom software was also published 11/22/96 (61 FR 59485). **On 12/16/96, the Administrator signed final rule amendments, which were published 12/23/96 (61 FR 67477). Final rule became effective 1/1/97.** Industry training partnerships have been executed.

Next steps:

(1) FRA offered RSAC a task on 9/30/97 to review the definition of events required to be reported as train accidents, as requested by the Committee on 6/24/97. By request of the Committee, the task was limited to determination of damages qualifying an event as a reportable train accident. A working group has been formed and held its initial meeting 2/8/99. The working group has designed a survey form to collect specific data about damages on railroad equipment. The survey began August 1, 2000 and ended January 31, 2001. The survey was voluntary, but most of the larger freight railroads participated, as well as four passenger railroads. A complete statistical analysis will be done at the conclusion of the survey to determine if a method can be used to calculate property damages.

(2) FRA will offer an additional task at the RSAC meeting of 4/23/01. The task will concern amendments needed to conform Part 225 to the Occupational Safety and Health Administration's revised recordkeeping and reporting rule (1/18/01). In addition, it will be requested that RSAC review the need for, and content of, various proposed changes to the Reporting Guide.

Blue Signal Protection

Summary: On 8/16/93, FRA published a final rule permitting one or more utility employees to associate themselves with a train crew for the purpose of performing normal operating functions that require employees to go on, under or between rolling stock, without use of blue signal protection (which is ordinarily appropriate for mechanical duties). During the proceeding it was noted that rules for locomotive engineers working alone were not clearly defined. FRA published a final rule amendment governing single engineers working alone on 3/1/95, but granted a requested suspension of the amendment on 6/9/95 pending development of additional facts. Since that time, additional blue signal issues have continued to emerge, including application of the requirements to contractors performing the subject functions on railroad property.

Status: On 10/31/96, the RSAC advised FRA that this project should not be proposed for early tasking, given conflicting demands on the resources of member organizations. RSAC accepted task at the 1/28/00 full Committee meeting. A working group has been formed and held its first meeting on 10/16-18/00 in Washington, DC. The second working group meeting was held 2/27-3/1/01 in San Diego. The third meeting was held 3/20-3/22/01 in St. Louis, MO. The next two meetings of the working group are scheduled for 05/1-3/01 in Atlanta, GA and 06/19-21/01 in Orlando, FL.

Bridge Displacement Detection Systems (Report)

Summary: The Federal Railroad Safety Authorization Act of 1994 required FRA to submit a report on systems to detect bridge displacement of the type that caused the derailment of the Sunset Limited at Mobile, Alabama, 9/22/93.

Statutory deadline: 5/2/96

Status: A technical evaluation report was published 6/23/94 and made available to the respective committees. A formal report was issued and forwarded to the Congress on 4/11/00.

Control of Alcohol and Drug Use; Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who Are Based Outside the United States and Perform Train or Dispatching Service in the United States

Summary: In general, FRA's regulation on the control of alcohol and drug use (49 CFR Part 219) currently applies to all railroads that operate on the general rail system of transportation in the United States. However, part 219 presently exempts from certain subparts operations by foreign railroads and certain small railroads.

Status: FRA completed the NPRM, which is in review and clearance in the Executive Branch.

Event Recorder Next-Generation Performance Standards

Summary: The National Transportation Safety Board has noted the loss of data from event recorders in several accidents due to fire, water and mechanical damage. In issuing final rules for event recorders which became effective 5/5/95, FRA noted the need to provide more refined technical standards. NTSB proposed performance standard for data survivability.

Background: Conducted an initial meeting of an informal working group comprised of AAR, RPI, and labor, and co-chaired by NTSB and FRA experts, on 12/7/95 to consider development of technical standards. At the RSAC meeting on 7/24-7/25/96, the AAR agreed to continue this inquiry, and on 11/1/6, AAR reported to the RSAC the status of work on proposed industry standards. On March 5, 1997, NTSB issued recommendations regarding testing and maintenance of event recorders as a result of finding in the investigation of the BNSF accident of 2/1/96 at Cajon Pass, California. On 3/24/97, the RSAC indicated its desire to receive a task to consider NTSB recommendations with respect to crash survivability, testing and maintenance.

Status: RSAC accepted task 6/24/97. Event Recorder working group first met 9/12/97. The Working Group and Task Force have conducted meetings and a draft proposal rule is being reviewed. FRA is integrating comments received. (Task No. 97-3). The NPRM is expected by end of Fiscal Year (09/01).

Florida Overland Express

Summary: FRA received a petition for a rule of particular applicability for operations over a new high-speed railroad between Miami and Tampa via Orlando. The State of Florida had established a dedicated funding stream of $70 million per year towards creation of this new private/public partnership.

Status: Received petition for rule of particular applicability 2/18/97. FRA issued NPRM 12/12/97 (62 FR 65478). Comment period closed. FRA reviewed comments received and held a public hearing on 11/23/98 to discuss a variety of issues. The State of Florida withdrew its support and funding for this project 1/99, suspending all activity on development. The rulemaking was terminated (65 FR 50952; 8/22/00).

Freight Car Safety Standards; Maintenance-of-Way Cars

Summary: Cars not in compliance with the Freight Car Safety Standards may be operated at track speed in revenue trains if they are company-owned, stenciled cars. FRA published an NPRM 3/10/94 to close this loophole. FRA requested the Association of American Railroads to amplify its comments by letter of 12/20/94.

Status: AAR response received 8/4/95 is under review. FRA offered a task to the RSAC to resolve final rule issues on 9/30/97; following an objection from the AAR, the matter was prevented from coming to a vote. FRA will prepare the final rule.

Locomotive Crashworthiness and Working Conditions

Summary: The Rail Safety Enforcement and Review Act of 1992 required FRA to conduct a proceeding regarding locomotive crashworthiness and working conditions and to issue regulations or submit a report. Areas for consideration included structural means of preventing harm to crew members in collisions (collision posts, anticlimbers, etc.) and matters related to safety, health and productivity (e.g., noise, sanitation).

Statutory deadline: 3/2/95

Background: FRA conducted research, outreach, and a survey of locomotive conditions and finalized a report to the Congress transmitted by letter of September 18, 1996. The report conveyed data and information developed by FRA to date, closed out those areas of investigation for which further action is not warranted, and defined issues that should be pursued further in concert with the industry parties, either for voluntary or regulatory action. On 10/31/96, the RSAC accepted a preliminary planning task. The Locomotive Crew Safety Planning Group met 1/23/97, and subsequent consultations led to preparation of task statements.

Status: RSAC accepted two tasks 6/24/97. (RSAC Task 97-1, locomotive crashworthiness; and Task 97-2, locomotive cab working conditions).

Locomotive Crashworthiness Working Group met 9/8-9/97 and established a task force on engineering issues that has been active in reviewing collision history and design options. The Working Group reviewed the results of research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. A working group team has concluded its development of accident data used in the economic analysis. The review of collision data for use in the regulatory action was completed in September 2000. An NPRM will be circulated to the Working Group within the 04/-05/01 period. The Working group will meet to review.

Locomotive Cab Working Conditions Working Group met for the first time 9/10-11/97 and established task forces on noise and temperature.

Sanitation. The working group approved a draft NPRM on cab sanitation, which was approved by the full committee on 12/7/00. The NPRM was published 1/2/01 (66 FR 136). A public hearing was held 4/2/01; and the docket remains open through 5/1/01.

Noise exposure. The Cab Working Group met in October and November of 2000 on the issue of occupational noise exposure for cab employees and achieved tentative agreement on most of the significant issues. The working group met 4/3-4/5/01 to review draft rule text for an NPRM.

Temperature. The Cab Working Group has also considered issues related to cab temperature, but could not reach agreement to proceed. FRA prepared a proposal on cab temperature for issuance as an NPRM that remains in review and clearance within the Executive Branch.

The Cab Working Group is expected to consider additional issues (such as vibration) in the future.

Locomotive Engineer Certification; Miscellaneous Revisions

Summary: The final rule for locomotive engineer certification became effective in 1991, but certain issues were left unresolved. Experience under the rule has raised additional issues. Examples of issues under review include the status of operators of specialized maintenance of way equipment and types of conduct for which decertification is appropriate.

Status: An interim final rule amendment dealing with agency practice and procedure concerning engineer certification appeals was published 10/12/95. Issues related to procedures on the properties, offenses warranting decertification, periods of decertification, operation of specialized equipment, etc., are pending. The RSAC accepted this task on 10/31/96. The Working Group's initial meeting was held 1/7-1/9/97. Final meeting to review proposed rule language was held 10/7-10/9/97, and task force on hearing and vision met 10/21/97 to finalize language. The full committee voted 5/14/98 to recommend issuance of the NPRM forwarded by the Working Group. The NPRM was published 9/22/98 (63 FR 50625) (RSAC Task 96-6.) The Working Group met to resolve issues presented in public comments, and on 1/28/99 the RSAC voted to transmit recommendations regarding issues for which the Working Group had received comments. The final rule was published 11/8/99 (64 FR 60966); effective date 1/7/00. (FRA Docket No. RSOR-9. Notice 12).

Northeast Corridor (NEC) Signal & Train Control

Summary: Amtrak is planning operations to 150 mph on portions of the NEC and is implementing improvements to the automatic train control system that will provide positive stop and continuous speed control capabilities. FRA's Northeast Corridor Safety Committee (NCSC) met 9/20/94 and approved a set of performance criteria for the new system.

Status: On 1/30/97, Amtrak provided to FRA a draft system concept for the Advanced Civil Speed Enforcement System (ACSES), including conditions for operation on designated territories on the south and north ends of the NEC. Final details were received by FRA on 7/9/97. A notice of Proposed Order for the new signal and train control system authorizing speeds to 150 miles per hour (135 mph on the South End with only high-speed trains equipped under "flanking protection") was published 11/20/97 (62 FR 62097), and written comments were due by 12/22/97. As a result of requests, a public hearing was set for 2/17/98 (63 FR 3389), and the comment closing date was extended to 2/24/98. Final Order of Particular Applicability published 7/22/98 (63 FR 39343); effective 8/21/98. Amendments to the Order of Particular Applicability published 10/19/00 (65 FR 62975). The amendments include a new implementation schedule and technical changes. The order was further amended to provide a temporary procedure for operations in the case of failed on-board equipment (66 FR 1718; 1/9/01).

Passenger Equipment Safety Standards

Summary: The Federal Railroad Safety Authorization Act of 1994 (enacted 11/2/94) required FRA to issue initial passenger safety standards within 3 years and complete standards within 5 years. The agency was authorized to consult with industry parties outside the Federal Advisory Committee Act, making it possible to conduct an informal negotiated rulemaking.

Statutory deadline: 11/2/97 (initial); 11/2/99 (final).

Status:
Phase I: An initial meeting of the Passenger Equipment Safety Working Group (passenger railroads, operating employee organizations, mechanical employee organizations, and representatives of rail passengers) was held on 6/7/95, and the group met regularly to develop an NPRM. Manufacturer/supplier representatives served as associate members. FRA prepared an ANPRM indicating the issues under review by the working group, which was published 6/17/96 (61 FR 30672). The working group held its final meeting on the NPRM 9/30-10/2/96, having reached consensus on a portion of the issues presented. An NPRM was published 9/23/97 (62 FR 49728). The public hearing was held 11/21/97 (see 62 FR 55204; 10/23/97). Comments were due 11/24/97. Final working group meeting on the initial standards was held 12/15-12/16/97, and an additional meeting on intercity and high speed issues was held 1/6/98. The final rule was published 5/12/99 (64 FR 25540). Final rule amendments responsive to petitions for reconsideration on issues regarding inspection, testing and maintenance of passenger cars were published 7/3/00 (65 FR 41284). FRA is finalizing additional amendments in response to petitions for reconsideration.

Phase II: The first phase of this rulemaking activity, including the passenger emergency preparedness proceeding described below, resulted in comprehensive safety standards for passenger service. Phase II will address enhancements based on ongoing research, development of detailed standards by the American Public Transportation Association (APTA) Passenger Rail Equipment Safety Standards (PRESS) task force, and other identified needs. This phase commenced in 2000 and will be progressed through targeted rulemakings as research results and consultations mature. Held a research needs workshop with APTA in April 2000.

Passenger Train Emergency Preparedness

Summary: The Federal Railroad Safety Authorization Act of 1994 required FRA to issue emergency preparedness standards for passenger service. Initial standards were required within 3 years and complete standards within 5 years. The agency was authorized to consult with industry parties outside the Federal Advisory Committee Act, making it possible to conduct an informal negotiated rulemaking.

Statutory deadline: 11/2/97 (initial); 11/2/99 (final)

Background: An initial meeting of the working group for passenger train emergency preparedness standards was held on 8/8/95. The group met 2/6-7/96 to develop elements of an NPRM and met jointly with the Passenger Equipment Safety Standards Working Group on 3/26/96 to consider related issues, including the implications of Emergency Order No. 20 and recommendations of the National Transportation Safety Board. The working group included representatives of passenger railroads, operating employee and dispatcher organizations, and rail passenger organizations, and an advisor from the National Transportation Safety Board. The working group approved draft rule text, which was incorporated in an NPRM forwarded

for review and clearance. Changes requested during review and clearance were provided to the working group during the week of 12/16/96.

Status: The NPRM was published 2/24/97 (62 FR 8330), and a notice of public hearings was published 3/6/97 (62 FR 10248). Public hearings were held in Chicago on 4/4/97 and in New York City on 4/7/97. Written comments were due by 4/25/97. The working group met 8/28/97 and agreed in principle to revisions for inclusion in the final rule. The final rule was published 5/4/98 (63 FR 24630), and a correction notice was published 7/6/98 (63 FR 36376).

NOTE: The following order is closely associated with the two prior entries:

Emergency Order No. 20

Summary: This order deals with the safety of push/pull and electric multiple unit service. The order was issued 2/20/96 (61 FR 6876; 2/22/96), and amended 2/29/96 (61 FR 8703; 3/5/96). Intercity and commuter passenger railroads were required to adopt operating rules providing for observance of reduced speed where delays are incurred in blocks between distant signals and signals at interlocking or controlled points. Marking of emergency exits and testing of emergency windows was required. Interim system safety plans were required to be filed.

Status: The order has been fully implemented. On 3/26/96, the Passenger Equipment Safety Working Group and the Emergency Preparedness Working Group met jointly to consider implementation issues and crossover issues with the two rulemaking proceedings and recent recommendations of the National Transportation Safety Board. The American Public Transportation Association and its members have undertaken a number of actions in response to the emergency order, including development of comprehensive system safety plans. Codification, revision or termination of provisions will be considered during the second phase of passenger safety standards rulemaking.

Positive Train Control

Evaluation of needs and feasibility (implementation):
Summary: These tasks involve defining PTC functionalities, describing available technologies, evaluating costs and benefit of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. (RSAC Tasks 97-4 and 97-5).

Status: Accepted by RSAC 9/30/97. Monitoring of implementation continues. Data and Implementation Task Force completed report on future of PTC, which as accepted by the full RSAC on 9/8/99. Meeting of Working Group was held 3/26/01 to discuss updates on projects.

Performance Standards for PTC Systems
Summary: Existing signal and train control regulations are built around relay-based controllers and traditional track circuits, but technology is rapidly advancing. This task requires revising various regulations, including 49 CFR Part 236, to address the safety

implications of processor-based signal and train control technologies, including communication-based operating systems. The purpose of the effort is to encourage deployment of innovative technology by providing a predictable environment. (RSAC Task 97-6). The concept of PTC refers to the ability to prevent train-to-train collisions, over speed derailments and casualties to roadway workers who are within authorized work zones along the railroad.

Status: Accepted by RSAC 9/30/97. The proposed rule on processor-based signal and train control systems was approved by consensus at the full RSAC meeting on 9/14/00. The NPRM is in review and clearance within the Executive Branch.

Progress Report to the Congress:
Summary: The Swift Rail Development Act of 1994 required FRA to submit a status report on the implementation of positive train control as a follow-up to the 7/94 Report entitled *Railroad Communications and Train Control.*

Statutory deadline: 12/31/95

Status: The Report was issued in letter format and forwarded to the Congress on 5/17/00. It enclosed the RSAC Report entitled ***Implementation of Positive Train Control Systems*** (approved 9/8/99).

Power Brakes

Summary: The Rail Safety Enforcement and Review Act (1992) required FRA to revise the power brake regulations. The statute required adoption of requirements for 2-way end-of-train telemetry devices (EOTs) and "standards for dynamic brakes."

Statutory deadlines: Final rule by 12/31/93; 2-way EOTs to be used on trains operating greater than 30 miles per hour or in mountain grade territory to be equipped by 12/31/97.

Status: FRA published an NPRM 9/16/94 and conducted six days of public hearings ending 12/94. Due to strong objections to the NPRM, additional options were requested from passenger interests by 2/27/95 and from freight interests by 4/3/95. Further action is as follows:

1) ***Passenger standards revision:*** FRA requested the Passenger Equipment Safety Standards Working Group to incorporate new proposals for revisions of the power brake regulations in the NPRM for passenger equipment safety. Working group proceedings on the elements of the NPRM concluded 10/2/96 without full agreement on power brake elements. See Passenger Equipment Safety Standards for final rule action.

2) ***Freight standards revision:*** On 4/1/96, the RSAC accepted the task of preparing a second NPRM. The working group initiated its efforts in May, and on 10/31/96 the RSAC extended the deadline for a final report until 1/15/97. At the working group meeting 12/4/96, an impasse was declared, and subsequent efforts to revive

discussions were not successful. On May 29, FRA notified the working group by letter that the task will be formally terminated. FRA withdrew task at 6/24/97 full Committee meeting. FRA prepared second NPRM reflective of what was learned through the collaborative process. NPRM published 9/9/98 (63 FR 48294) (FRA Docket No. PB-9, Notice No. 13). (RSAC Task 96-1--terminated). Public hearings were conducted on 10/26/98 and 11/13/98 and a technical conference was held on 11/23-24/98. Final date for submission of comments extended until 3/1/99. **The final rule was published 1/17/01 (66 FR 4101).** An amendment extending the effective date of the final rule until May 31, 2001, was published on February 12, 2001 (66 FR 9905). On March 19, 2001, AAR submitted an official petition for reconsideration of the final rule.

3) **Two-way end-of-train devices:** FRA published notice on 2/21/96 that this issue would be separated from the balance of the freight issues and expedited for completion of a final rule. A public regulatory conference was convened 3/5/96 to explore remaining issues, and written comments were due 4/15/96. (Railroads also agreed to an expedited schedule that will ensure application of this technology by 12/15/96 on 2% or greater grades and by 7/1/97 for other trains.) The final rule was published 1/2/97 (62 FR 278) (FRA Docket No. PB-9, Notice No. 6), and it became effective 7/1/97. FRA received two petitions for reconsideration ("local train" definition and implementation date for smaller railroads). A notice denying the request to delete the tonnage restriction for local trains and granting extension of the compliance date for railroads with fewer than two million work hours was published 6/4/97 (62 FR 30461). On 11/4/97, held technical conference on petition of American Short Line Railroad Association regarding operation of very light trains over grade territory (see 62 FR 52370; 10/7/97); subsequently granted certain relief.

On 1/16/98, FRA published NPRM to clarify application of two-way EOT requirements to intercity passenger trains with express equipment at the rear (63 FR 195). Final rule was issued 5/1/98 (63 FR 24130). (FRA Docket No. PB-9, Notice No. 11).

Note: On 2/6/96, the Administrator issued Emergency Order No. 18, requiring use by the BNSF of 2-way EOTs or equivalent protection for heavy grade operations over the Cajon Pass (61 FR 505; 2/9/96).

Railroad Communications (including Radio Standards and Procedures)

Summary: In submitting the required report to the Congress on Railroad Communications and Train Control on 7/13/94, FRA noted the need to revise existing Federal standards for radio communications in concert with railroads and employee representatives.

Status: On 4/1/96, the RSAC accepted the task of preparing an NPRM, including consideration of communication capabilities required in railroad operations. The working group presented a consensus NPRM to the full Committee on 3/24/97, and the Committee voted to recommend issuance of the NPRM to the Administrator in balloting that ended 4/14/97. NPRM issued 6/11/97 and published 6/26/97 (62 FR 34544) (FRA Docket No.

RSOR-12, Notice No. 4). Comment period closed 8/25/97. Final rule published 9/4/98 (63 FR 47182). (FRA Docket No. RSOR-12, Notice No. 5). (RSAC Task 96-3).

Regulatory Reinvention

Summary: In response to President Clinton's call for regulatory review, elimination and reinvention, FRA took several actions to repeal obsolete regulations and simplify agency processes that affect external customers. Major elements of this effort are included in regulatory revision efforts described under other headings.

Status: Interim final rule amendments reducing frequency of reporting regarding signal and train control systems (49 CFR Part 233), simplifying review requirements for certain modifications of signal systems (49 CFR Part 235), and making conforming changes regarding inspection of ATC/ATS/ACS (49 CFR Part 236) published 7/1/96 (61 FR 33871). These amendments are being prepared for publication. FRA's proposed 1999 rail safety reauthorization legislation, introduced in the 106th Congress as H.R. 2683 and S. 1496, included provisions to permit flexibility for railroads to make accident/incident reports less frequently than monthly and to eliminate outdated requirements for notarization of reports. (This bill has now lapsed with the end of the 106th Congress).

Roadway Worker Safety

Summary: In requiring the review of the Track Safety Standards, the Rail Safety Enforcement and Review Act (1992) required FRA to evaluate the safety of maintenance of way employees. In addition, the Brotherhood of Maintenance of Way Employes and the Brotherhood of Railroad Signalmen petitioned FRA to issue "on-track safety" rules.

Background: FRA published a notice 8/17/94 initiating a formal negotiated rulemaking. The negotiated rulemaking committee reported a statement of principles 5/17/95 and completed an NPRM draft 8/95. NPRM published 3/14/96 (61 FR 10528); initial written comments were due 5/13/96. Public hearing held 7/11/96.

Status: The final rule was published 12/16/96 (61 FR 65959); effective 1/15/97. Petitions for reconsideration were denied in a notice published 4/21/97. A consolidated hearing on waiver petitions was held 5/22/97, and written comments were due by 6/9/97. FRA issued decisions on individual petitions as investigations and analysis were completed.

Safety Integration Plans

Summary: In response to the proposed acquisition of Conrail by Norfolk Southern and CSX Transportation, FRA suggested, and the Surface Transportation Board required, that the petitioners file with the Board of Safety Integration Plans (SIPs). In coordination with the Board, FRA proposed regulations requiring preparation and FRA review of SIPs in connection with future railroad mergers.

Status: FRA and the STB jointly issued an NPRM 12/31/98 (63 FR 72225) to institutionalize the SIP process to ensure that proper safety planning and safety investments are undertaken

during a merger. The proposed rule spells out the types of transactions that will require SIPs and outlines the roles of FRA and the STB in overseeing the SIP process. FRA has reviewed the comments and is preparing the final rule for Executive Branch review.

Small Railroads; Interim Policy Statement

Summary: The Small Business Regulatory Enforcement Fairness Act of 1996 amended the Regulatory Flexibility Act and required, among other things, that each agency establish small business communication and enforcement programs.

Statutory deadline: 3/29/97

Status: Interim policy statement published 8/11/97 (62 FR 43024). Public meeting to address definition of "small entity" was held on 9/28/99. FRA is preparing a final policy statement.

Steam Locomotives

Summary: A committee of steam locomotive experts from tourist and historic railroads has sought a partnership with FRA to revise the steam locomotive regulations. Proposed revisions would relieve regulatory burdens while updating and strengthening the technical requirements.

Status: Revision of the Steam Locomotive Inspection regulations was tasked to the RSAC on 7/24/96. A task force of the Tourist and Historic Railroads Working Group is actively working toward finalization of a final rule. NPRM rule text agreed upon within the task force was approved by the Tourist and Historic Working Group on 9/3/97 and provided to the RSAC on 9/30/97. The full RSAC approved the consensus NPRM by mail ballot 2/17/98. NPRM published 9/25/98 (63 FR 51404) (FRA Docket No. RSSL 98-1, Notice No. 1). (RSAC Task 96-5). Public hearing held 2/4/99. Task Force formulated recommendations in response to comments received. The recommendations were accepted by the working group and the full Committee voted to incorporate the recommendations in the final rule. The final rule was published 11/17/99 (64 FR 62828) (FRA Docket No. RSSL 98-1, Notice No. 3); effective date 1/18/00.

Roadway Maintenance Machines [Track Motor Vehicle and Roadway Equipment Safety]

Summary: A 1990 petition to FRA from the Brotherhood of Maintenance of Way Employes asked FRA, among other requests, to propose standards for MOW equipment related to the safety of persons riding or operating that equipment. FRA elected not to pursue that issue at that time given other pending workload. However, this issue was renewed during the deliberations of the RSAC Track Safety Standards Working Group.

Status: On 10/31/96, the RSAC accepted a task of drafting proposed rules for the safety of this equipment. A task force of the Track Safety Standards Working Group was formed to address this issue. The NPRM on Roadway Maintenance Machines and the final rule amendment on the Gage Restraint Measurement System were approved by the full RSAC in a mail ballot during August. The GRMS final rule amendment was published 1/10/01 (66 FR 1894) and Roadway Maintenance Machines NPRM was published 1/10/01 (66 FR 1930). See also Track Safety Standards re: GRMS final rule.

Tourist Railroad Report / *Review of Regulatory Applicability*

Summary: The Swift Rail Development Act of 1994 required FRA to submit a report to the Congress regarding FRA's actions to recognize the unique factors associated with these generally small passenger operations that often utilize historic equipment.

Statutory deadline: 9/30/95

Status: Report submitted to the Congress 6/10/96. The RSAC authorized formation of a Tourist and Historic Railroads Working Group 4/1/96. The working group held its initial meeting 6/17-6/18/96 and has monitored and assisted completion of the steam locomotive regulations task and will continue its oversight of task force activities, including the possible development of requirements for the training of steam locomotive operators and maintenance personnel. Planned future activities involve review of other regulations, such as track safety, emergency preparedness, and passenger equipment safety standards for possible adaptation to the safety needs of tourist and historical railroads. (RSAC Task 96-4).

Track Safety Standards

Summary: The Rail Safety Enforcement and Review Act (1992) required FRA to revise the Track Safety Standards, taking into consideration, among other things, the "excepted track" provision. Other prominent issues include updating the standards to take advantage of research findings for internal rail flaw detection and gage restraint measurement. FRA also proposes to adopt track standards for high-speed service.

Statutory deadline: Final rule by 9/1/95.

Background: FRA published an ANPRM 11/6/92 and conducted workshops in the period 1/93-3/93. The RSAC accepted the task of preparing an NPRM on 4/2/96. The Track Safety Standards Working Group reported a draft NPRM to the full committee on 10/31/96. In

balloting that concluded 11/21/96, RSAC voted to accept the working group report and recommend issuance of the NPRM.

Status: NPRM signed 6/19/97 and published 7/3/97 (62 FR 36138) (FRA Docket No. RST-90-1, Notice No. 5). Hearing held 9/4/97; comment period closed 9/15/97. Additional comment was invited regarding certain high-speed track geometry issues by notice of 12/12/97 (62 FR 65401) not later than 12/22/97. Final rule published 6/22/98 (63 FR 33991) (FRA Docket No. RST-90-1, Notice No. 8); effective 9/21/98.

The final rule amendment on Gage Restraint Measurement System (GRMS) standards and the NPRM on Roadway Maintenance Equipment were approved by the full RSAC in a mail ballot during August. The GRMS final rule amendment was published 1/10/01 (66 FR 1894) and Roadway Maintenance Machines NPRM was published 1/10/01 (66 FR 1930). On 1/31/01, FRA published a notice extending the effective date of the GRMS amendment to 4/10/01 (66 FR 8372). On February 9, 2001, FRA published a notice delaying the effective date until 6/9/01, in accordance with the Regulatory Review Plan (66 FR 9676).

U.S. Locational Requirement for Dispatching of U.S. Rail Operations

Summary: New 49 CFR Part 241 would require all dispatching of railroad operations that occur in the United States to be performed in the United States, with certain exceptions.

Status: Drafting of the Interim Final Rule has been completed, and FRA has forwarded the IFR for review and clearance.

HIGHWAY-RAIL CROSSING SAFETY

Commercial Driver Disqualification - Railroad-Highway Grade Crossing Violation

Summary: To enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways and complete action initiated in response to the requirements specificed in section 403 of the ICC Termination Act of 1995, the Federal Motor Carrier Safety Administration revised its regulations (49 CFR Parts 383 and 384) to require that CMV drivers who are convicted of violating Federal, State, or local laws or regulations pertaining to railroad-highway grade crossings be disqualified from operating a CMV.

Status: Final rule published on 09/02/99 (64 FR 48104).

Selection of Grade Crossing Automated Warning Devices

Summary: FRA published a Notice of Proposed Rulemaking 3/2/95 (60 FR 11649) and received over 3,000 written comments through 6/14/95.

Status: Termination notice published 8/8/97 (62 FR 42733).

Use of Locomotive Horns (Whistle Bans)

Summary: Legislation enacted with the Swift Rail Development Act of 1994 required FRA to issue regulations providing for the use of train horns at highway-rail crossings.

Statutory deadline: Final rule 11/2/96 (most hazardous crossings), 11/2/98 (other crossings).

Background: This legislative mandate anticipated FRA follow up to Emergency Order No. 15, which addressed local whistle bans on the Florida East Coast Railroad between Jacksonville and Miami. FRA released a report on the national impacts of local whistle bans on 6/1/95 and conducted an extensive program of public outreach to make communities aware of the forthcoming rulemaking and to seek information on supplementary safety measures that would support allowance of quiet zones in communities sensitive to train horn noise. Contacts were established with 160+ jurisdictions known to have whistle bans in place. FRA representatives met with or addressed forums of state and local officials and community groups. Met with AAR/BRS/AAHSTO/FHWA 12/13/95 to address technical specifications for 4-quadrant gates.

Numerous congressional offices encouraged FRA to continue outreach and data collection. FRA advised the Congress that the deadline for an initial final rule would not be met as a result. Immediately prior to adjournment, the 104th Congress enacted the FAA reauthorization bill (PL 104-264; 10/9/96), which included amendments to the original whistle ban legislation. In general, the legislation affirmed the latitude available to the Secretary to provide for phase-in of regulations and focus on safety results.

Status: NPRM published 1/13/00 (65 FR 2230) (Docket No. FRA-1999-6439, Notice No. 1). Written comments were due 5/26/00. FRA held 12 public hearings and a technical conference to receive oral comments. Received and reviewed more than 3,000 comments (combined for the NPRM and draft environmental impact statement). Labor, Health and Human Services Appropriations Act, 2001, bars issuance of final rule before 7/1/01. Preparing final rule.

Completion of the Department of Transportation's Technical Working Group recommendations on new standards for the use and implementation of highway-rail grade crossing warning devices (cross bucks, lights, gates, grade separation).

Summary: The FRA and the Federal Highway Administration are co-chairs of the Working Group whose members include representatives of the Federal Transit Administration (FTA), the National Transportation Safety Board (NTSB), the Association of American Railroads, the

American Shortline and Regional Railroad Association, state transportation agencies, county transportation agencies, the supply industry and academia. A report will be published in 2001.

The FRA and Operation Lifesaver, Inc. (OL) completed the development of new Public Service Announcements (PSA) to promote highway-rail grade crossing safety and railroad trespasser prevention.

Summary: The PSAs are being developed with a $350,000 federal grant. Focus group sessions were completed in July, and preliminary PSA concepts have been reviewed and approved by representatives of FRA, OL, the Association of American Railroads, the International Association of Police Chiefs and other Federal/State and industry partners. Production of the PSAs was completed by December 31, 2000. Airing of the PSAs began after the Christmas/New Year holiday season.

HAZARDOUS MATERIALS

New Directions for Hazardous Materials Safety by Rail

Summary: The movement of hazardous materials throughout the railroad industry provides an excellent example of the dynamic interrelationship between shippers, carriers, freight car builders, repair companies, and Federal, State, and Tribal governments. Under authority delegated to us by the Secretary of Transportation, we administer a safety program that oversees the movement of hazardous materials (including dangerous goods), such as petroleum and chemical products and nuclear shipments throughout the Nation's rail transportation system. Our agency also has authority to oversee the movement of a package marked to indicate compliance with a Federal or international standard, even if such a package does not contain a hazardous material. Our current hazardous materials safety regulatory program and standards-related partnerships include the following items:

- Hazardous Materials Incident Reduction Program
- Tank Car Facility Conformity Assessment Program
- Spent Nuclear Fuel and High-Level Nuclear Waste Program
- Rulemaking, Approvals, and Exemptions
- Standards-Related Partnerships

Hazardous Materials (HazMat) Incident Reduction Program:

Data collected by the Research and Special Programs Administration shows about 1100 HazMat releases per year from bulk packages such as tank cars that do not result from a derailment or other transportation accident. That number has remained relatively consistent for over 10 years. It is important to note that despite FRA's focus on shippers in the past, our efforts have not resulted in dramatic safety improvements in this area. The largest decline in HazMat releases resulted from a Federal rulemaking that increased the burst pressure of rupture discs on tank cars, an industry outreach effort to communicate the risk of disc failures, and an industry effort to install surge-suppression devices below the disk on tank cars.

Materials Safety program because of the heavy reliance on tank cars to transport the majority of hazardous materials by rail.

The program is designed with three objectives. The first objective is to gauge and improve the level of compliance with Federal regulations at facilities where DOT specification tank cars and other tank cars used to transport hazardous materials are manufactured, repaired, inspected, tested, qualified, or maintained. The second objective is to provide improved uniformity with regard to inspection activities and facilitate on-the job training through a program that brings inspectors together in a manner that is not generally possible. The third objective is to fortify the overall rail safety program through an improvement in quality at these facilities.

Safety Compliance Oversight Plan for Spent Nuclear Fuel and High-Level Nuclear Waste:

The FRA has regulatory oversight for the safety of railroad operations within the United States. Ranking at the top of FRA's priorities is the safety of rail shipments involving Spent Nuclear Fuel (SNF)[1] and High-Level Radioactive Waste (HLRW)[2]. These materials have been transported safely by rail in the United States for more than 40 years. In the mid-1980s, partly as a result of the rail shipments from the Three Mile Island Nuclear Power Plant, FRA implemented its High-Level Nuclear Waste Rail Transportation Inspection Policy[3] for all known rail shipments of SNF and HLRW. Under FRA's Inspection Policy, there has never been a rail accident or incident involving the transportation of SNF or HLRW that has resulted in a release of the material from the packaging. Furthermore, there has never been a single death or injury resulting from a rail shipment of radioactive material.

Nevertheless, past rail shipping campaigns have shown that the nature of the potential hazards associated with radioactive materials elicits a high degree of public awareness and concern regarding the safety and integrity of SNF and HLRW shipments by rail. Furthermore, these shipments are projected to increase dramatically in volume in the foreseeable future; 75 to 90 percent of the SNF and HLRW will be transported by rail. Total annual shipments of these materials are expected to increase from the current 15 to 25 shipments per year to between 400 to 600 shipments per year within the next decade.

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1 The Nuclear Waste Policy Act of 1982 (NWPA) defines "spent nuclear fuel" as "fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing."

2 NWPA defines "high-level radioactive waste" as "(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation." The term "Commission" as used in the definition means the Nuclear Regulatory Commission.

3 See Appendix A "*Federal Railroad Administration High-Level Nuclear Waste Rail Transportation Inspection Policy*".

It is observed that non-accident related releases of a HazMat generally result from a Federal or industry standard that was allowed to progress to failure. To prevent releases, the agency and industry must focus on the detection of in-process failures, such as deterioration of gaskets, threaded closures, shell corrosion, and the progression of fatigue cracks in tank shell material. Failures also include training programs that fail to deliver the needed knowledge and skills to operating personnel.

Starting in September of 2000, the agency developed a new performance plan to help reduce the number of in-process failures in transportation. The plan first reviews national performance trends based on accident/incident data and FRA field inspection activity. The findings from the review are then made part of the HazMat Division's National Performance Goals (NPG). Implementation of the NPG follow one or more of the following areas:

- Continued review of accident/incident data
- Continued review of inspection data
- Field assessments, audits, and interviews
- Regionally-based inspections based on areas identified as high risk
- Mechanical design improvements
- Operating improvements
- Outreach programs:
- Industry associations
- Plant labor and management safety meetings
- Seminars and conferences
- Training and education

Tank Car Facility Conformity Assessment Program:

Chapters 51 and 201 of Title 49, United States Code (formerly the Hazardous Materials Transportation Act and the Federal Railroad Safety Act of 1970) provide DOT with sweeping regulatory authority to oversee the construction of bulk packages used in the rail transportation system, such as tank cars and covered hoppers. The Secretary of Transportation has delegated the enforcement of Chapter 51 and its implementing regulations to the FRA. Although part of FRA's program since 1967, the agency's attention to the manufacturing and maintenance details of tank car construction was *ad hoc*, and generally associated with tank car failures. Beginning in September 2000, the agency established a comprehensive plan to oversee the facilities that have the potential to introduce defects into the manufacturing and maintenance cycle of tank cars.

Currently, the North American tank car industry consists of 20 locations that fabricate and assemble tank cars and more than 100 locations that assemble and repair tank cars. There are also about 350 additional locations that provide manufacturing and maintenance services to tank car internal lining and coatings and to service equipment, such as valves and fittings. Overseeing this industry requires a coordinate effort of nationally-based and regionally-based inspection efforts, all focused at preventing failures from entering the transportation system. The national program is a work product in FRA's initiative to improve quality in tank car manufacture, repair, and maintenance programs. The plan is an integral part of the Hazardous

Development of the SCOP involved a coordinated effort between FRA, DOE, the Association of American Railroads (AAR), railroad labor organizations, and representatives of affected States. FRA wishes to acknowledge the invaluable contribution of its safety partners whose insight and wisdom were instrumental in formulating the policies and procedures that are incorporated into the SCOP.

In developing the SCOP, FRA has revised its previous policy to include the following safety enhancements in planning, inspection, training, and oversight activity areas:

Planning

- FRA, DOE, the offeror or agent, and the rail carriers will consider track classification in the route selection process to ensure that the highest-rated track is utilized.

- FRA will prepare an accident prediction model for the highway-rail grade crossings along the route. FRA will assist DOE in coordinating with appropriate State, local, and tribal agencies in route planning activities, using this model.

- The Department of Transportation's (DOT) Office of Intelligence and Security will assist FRA in coordinating safety precautions, such as the identification of "safe havens," with the offeror, law enforcement officers, and intelligence communities.

Inspections

- FRA will arrange for a track geometry car to operate over designated routes.

- FRA will conduct visual inspections of bridges along the designated routes and review railroads' bridge inspection programs to ascertain structural integrity.

- FRA will review the rail carrier's rail flaw detection vehicle data to ensure that a rail flaw detection vehicle has been operated over the designated route, and necessary rail repairs are made prior to shipments.

- The SCOP requires that every train involved in the transportation of SNF and HLRW be equipped with a 2-way End-of-Train (EOT) braking device, regardless of train length. Prior to each shipment, and during each crew change point along the route, FRA will endeavor to inspect trains to ascertain that EOTs are operational.

Along a designated route, FRA will inspect all automated warning devices, at highway-rail grade crossings along the route, to ascertain that they are operational.

Training/Oversight

- FRA will assist DOE, and the offeror or agent, in the development of Emergency Response training and safety briefings. FRA also will liaison with the rail industry to verify that requisite training and briefings have been performed.

- Prior to the first shipment, and at least annually for subsequent shipments, FRA will review emergency response plans for designated routes and recommend modifications, if necessary.

- Prior to the first shipment, and at least annually for subsequent shipments, FRA will conduct the necessary reviews to ensure that train crews are properly certified, trained, and experienced in operating over the designated routes.

- FRA will place Operating Practices personnel in the rail carriers' dispatching centers for the first shipment on designated routes, and will review dispatching procedures periodically for subsequent shipments.

- Prior to the first shipment, and for subsequent shipments, as appropriate, FRA will focus on Operation Lifesaver training in communities along designated routes.

- FRA will continue to prioritize complaints regarding designated routes, and will continue to expedite the investigation and resolution of these complaints.

Rulemaking, Approvals, and Exemptions:

Standards-Related Partnerships:

Chapter 9, Article 906(1) and (2), NAFTA, states:

Recognizing the crucial role of standards-related measures in promoting and protecting legitimate objectives, the Parties shall. . . .work jointly to enhance the level of safety and of the protection of human, animal, and plant life and health, the environment and consumers. . . . .the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.

To accomplish the goals of NAFTA, the United States, Canada, and Mexico have agreed to develop standard-related measures, based on the *United Nations Recommendations on the Transport of Dangerous Goods* (orange book). One part of the standard concerns the design, construction, inspection, testing, and maintenance of tank cars. The development of the standard follows actions taken by the North American Free Trade Agreement, Land Transportation Standards Subcommittee (LTSS), Working Group on the Transportation of Dangerous Goods (Group 5) on June 11, 1998 in Montreal, Quebec, Canada. To meet this objective, Canada, Mexico, and the United States agreed to promote the development of an industry-sponsored standard-related measure for tank cars (North American Model Standard for Tank Cars [NAMS-TC).

Canadian General Standards Board:

Industrial Applications in Partnerships: To assist the industry in complying with new rules and to further research in inspection and test methods, FRA and the industry have partnered in the following safety initiatives:

- Maintenance Program Development

- Railcar operating environment stub-sill working group
- Reliability engineering research
- Tank car specimens for nondestructive examination research
- Critical flaw size research
- Fatigue crack growth properties of steels research
- Acoustic emission testing research
- Tank car damage assessment research
- Tank car fire protection research
- Tank car puncture resistance research
- Pressure relief valve sizing research
- Tank car design and use parameters for 286,000 gross rail loads research and rulemaking

Tank Car Crashworthiness and Retest

Summary: Research and Special Program Administration Dockets HM-175A and HM-201 addressed further improvements in tank car crashworthiness, and adoption of advanced non-destructive testing to improve tank retest procedures, respectively.

Status: Final rules published 9/21/95 (60 FR 49048).

OTHER SAFETY PROJECTS AND PARTNERSHIP EFFORTS

Bridge Structural Safety

Summary: Following a survey of bridge conditions and railroad inspection practices, FRA determined that regulatory action is not necessary, but that FRA should continue to exercise an oversight role regarding bridge structural safety programs. FRA issued an interim statement of policy 4/27/95, with comments due 6/26/95.

Status: Comments support continued FRA partnership role. FRA issued a final bridge statement of policy for safety of railroad bridges that establishes suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. The statement was published in the Federal Register on 8/30/00 (65 FR 52667).

Note: On 2/12/96, the Administrator issued Emergency Order No. 19, which removed from service a bridge on the Tonawanda Island Railroad in New York State pending necessary structural repairs (61 FR 628; 2/16/96). In 12/16/99, the Administrator reissued Emergency Order No. 22, which removed from service a bridge on the Oregon Pacific Railroad in Oregon State pending inspection of repairs to assure safety (64 FR 71844; 12/16/99). This Emergency Order was partially lifted by order of 1/20/00 (65 FR 5018; 2/21/00).

Discolored Wheels

FRA has granted a master waiver of the Freight Car Safety Standards permitting continued use of discolored heat-treated, curved plate wheels, which have superior resistance to thermal

abuse. Data gathered under the waiver, together with results of analysis already provided, may support a permanent change in the regulation.

Environmental Impacts

FRA revised its Procedures for Considering Environmental Impacts to update or eliminate outdated references to programs or statutory authorities that no longer exist and to correct inconsistencies with the Council on Environmental Quality's National Environmental Policy Act implementing regulations. The revised procedures were published in the Federal Register on 5/26/99 (64 FR 28545).

Hours of Service Electronic Recordkeeping

Current hours of service record keeping uses paper and ink, but a major railroad has been given relief to keep electronic records. Other railroads have expressed interest, and similar waivers will involve similar issues. At FRA's invitation, the AAR submitted a petition seeking a master waiver for use of electronic record keeping. However, individual railroads have elected to proceed separately, and FRA is processing each on its merits. Permanent amendments to the recordkeeping and reporting requirements may be proposed. FRA is assisting railroads in developing electronic systems by providing guidance materials.

Remote Control Locomotives

Current regulations contemplate operation of a locomotive exclusively from within the cab, and provision for the safety of the operation is made within that context. FRA has previously proposed a test program to gather more data on various types of operations. FRA has also held an informal safety inquiry regarding use of one-person crews and remote control locomotives on the Wisconsin Central (see 61 FR 58736; 11/18/96). On 5/15/00, FRA published a notice of a technical conference to examine the current status of safety issues related to this technology (65 FR 31056). The technical conference was held on July 19, 2000. Total meeting attendance, including presenters, was approximately 120. The Technical Conference focused on the changes in RCL operations that have occurred over the past five years. Notice of Safety Advisory 2001-01, which establishes recommended minimum guidelines for the operation of remote control locomotives was published 02/14/01 (66 FR 10340).

Shared Use of General Railroad System - Joint Statement of Agency Policy

FRA and the Federal Transit Administration (FTA) have been working together to develop a policy concerning safety issues related to light rail transit operations on the general railroad system, how the two agencies intend to coordinate use of their respective safety authorities, and the waiver process related to shared use operations. A proposed joint statement of policy was published 5/25/99 (64 FR 28238) with comments due on 7/30/99. Comment period extended on 7/28/99 to 10/29/99 (64 FR 40931). Additional extension on 10/28/99 to 1/14/00 (64 FR 58124). FRA issued a final joint policy statement describing the extent of its statutory jurisdiction over railroad passenger operations and explaining how it will exercise its jurisdiction. The statement was published 7/10/2000 (65 FR 42526). (Docket No. FRA-1999-5685.)

Shared Use of General Railroad System - FRA Jurisdiction Policy Statement

FRA issued a proposed statement of agency policy on 11/1/99 (64 FR 59046) (FRA Docket No. FRA-1999-5685, Notice No. 4) describing the extent of its statutory jurisdiction over railroad passenger operations (which covers all railroads except urban rapid transit systems not connected to the general railroad system) and to explain how it will exercise that jurisdiction. Comments were due by 1/14/00. Final Policy Statement published 7/10/2000 (65 FR 42529).

TOFC/COFC Securement

Summary: Following a serious accident at Smithfield, N.C., on 5/16/94, FRA formed a partnership with major railroads and labor organizations to evaluate and improve securement of intermodal loads. A report to the Secretary dated 9/15/94 documented the initial results of that effort.

Status: FRA held a meeting on 2/22/95 that focused on an item-by-item discussion of the status and progress made within the industry with respect to the seven recommendations identified in the report to the Secretary. The AAR has established an Intermodal Equipment Handling Task Force that has developed a number of training aids. A follow-up TOFC/COFC loading and securement safety survey was conducted during 1996. FRA conducted additional loading and securement field evaluations during July-August 1997. Joint training activity brought together railroads, TTX and FRA to maintain strong emphasis on compliance with AAR loading requirements. FRA continues to monitor securement of trailers and trucks in transportation and to work on this issue through SACP's on individual railroads. In August 1999, FRA inspectors began bi-regional team audits, with 18 inspections per team to be completed by August 2001. To date, the survey of intermodal loading facilities is progressing as planned. The deficiencies found are tracking at a rate similar to previous studies. As of 02/01/01, the teams have surveyed 5,686 railcars, 2,992 trailer platforms, and 8,452 container platforms. A total of 2,214 deficiencies were noted.

Train Dispatcher Training

FRA submitted a report to the Congress on 1/5/95 regarding the functions of contemporary train dispatching offices. The report noted that traditional pools of candidates for recruitment of train dispatchers are no longer adequate to the need. In partnership with the American Train Dispatchers Department/BLE (ATDD), FRA identified the need for a model train dispatcher training program.

Experts from Amtrak, the ATDD, the Burlington Northern/Santa Fe Railroad and FRA developed a list of elements for dispatcher training programs. Required competencies and training program elements have been abstracted from this effort for a model program. The RSAC was briefed on this effort on 3/24/97, with participants in the training task force indicating reluctance to attempt a "one size fits all" regulatory approach. More recent discussion in the RSAC has indicated a renewed interest by the ATDD in development of uniform minimum standards for dispatcher training and qualification.

SAFETY ADVISORIES/DIRECTIVES/BULLETINS (FEDERAL REGISTER NOTICES)

Advisories	
2001-2	**Structural Integrity of Cast Steel Draft Sills.** This advisory establishes recommended minimal guidelines for inspection, and operation of Trinity Industries covered hopper cars, with draft sills manufactured by American Steel Foundries. Also guidelines if car is involved in derailment and/or found defective. Published 03/12/01 (66 FR 14432).
2001-1	Remote Control Locomotives. This advisory establishes recommended minimal guidelines for the operation of remote control locomotives. Published 02/14/01 (66 FR 10340).
2000-3	Switching Operations. This advisory provides safety practices to reduce the risk of serious injury or death both to railroad employees engaged in switching operations and to the general public. Published 11/2/00 (65 FR 65895).
2000-2	Signal Units. This advisory recommends replacement of certain components in Harmon Industries' "Electro Code 4" and "Electro Code 4 Plus" intermediate signal units.
2000-1	**Model B1 relays.** This advisory asks railroads to inspect and test certain relays for which there is a concern regarding potential malfunction. Published 5/11/00 (65 FR 30474).
99-3	Securement of floor beam cross-members on RoadRailer trailers: Safety practices to prevent the highway tandem wheel on RoadRailer trailers from falling onto the rails on moving trains. Published 11/10/99 (64 FR 61377).
99-2	**[Not issued.]**
99-1	**Lifting or jacking of railroad equipment:** Safety practices related to lifting or jacking of railroad equipment in order to remove trucks or repair other components on a piece of railroad equipment which requires individuals to work beneath railroad equipment while it is raised. Published 6/16/99 (64 FR 32300).
98-3	**Safe Use of Prescription and Over-the-Counter Drugs:** Safety practices for the safe use of prescription and over-the-counter drugs by safety-sensitive railroad employees. Published 12/24/99 (63 FR 71334)
98-2	**Emergency application of airbrakes:** Safety practices to reduce the risk of casualties caused by failure to activate the available two-way end-of-train telemetry device (two-way EOT) to initiate an emergency brake application beginning at the rear of the train when circumstances require an emergency application of the train airbrakes. Published 6/5/98 (63 FR 30808).

98-1	**Vision standards of certified locomotive engineers:** Addresses the vision standards of certified locomotive engineers in order to reduce the risk of accidents arising from vision impaired engineers. Published 5/28/98 (63 FR 29297).
97-3	**Authorization of train movements past stop indications of absolute signals:** Safety practices to reduce the risk of accidents arising from conflicting train movements when train dispatchers and control operators authorize movements past a stop indication of an absolute signal. Published 9/18/97 (62 FR 49047).
97-2	**Failure to properly secure unattended rolling equipment:** Safety practices to reduce the risk of casualties from runaway locomotives, cars, and trains caused by failure to properly secure unattended rolling equipment left on sidings or other tracks. Published 9/18/97 (62 FR 49046)
97-1	**Protection of trains and personnel from hazards caused by severe weather conditions:** Safety practices to reduce the risk of casualties from train derailments caused by damage to tracks, roadbed and bridges resulting from uncontrolled flows of water and similar weather-related phenomena. Note: This was amended on November 12, 1997, by revising the recommendations concerning the transmission of flash flood warning to train dispatchers or other employees controlling the movement of trains. Published 9/4/97 (62 FR 46794).
Directives	
97-1	Review of operational tests and inspection programs and review of train dispatching procedures in non-signaled territory: Safety practices to evaluate the integrity of all railroads' programs of operational tests and inspections to ensure that safety-critical information is accurately conveyed and acknowledged for operations in non-signaled Direct Train Control (DTC) territory. Published 6/30/97 (62 FR 35331).
97-2	**Initiating emergency application of train airbrakes descending heavy grades:** Safety practice to prevent run-away trains on heavy grades of 2 percent or greater by initiating emergency application of airbrakes whenever train speed exceeds maximum authorized speed by five miles or more. Published 2/27/97 (62 FR 9014).
Bulletins	
97-1	**Loss of dynamic braking due to unintentional activation of emergency MU fuel-line cut-off device:** Safety practices for certain locomotives equipped with emergency MU fuel-line cut-off devices located inside the locomotive control compartment at a location which enables the cut-off device to be activated unintentionally. Published 1/30/97 (62 FR 4569).

Unnumbered: Recommended safety practices for Direct Train Control Operations. Published 12/3/96 (61 FR 64191).

RSAC Organization List

Organization	# Seats	Voting/Non-Voting
American Association of Private Railroad Car Owners (AAPRCO)	1	Voting
American Association of State Highway & Transportation Officials (AASHTO)	1	Voting
American Public Transportation Association (APTA)	2	Voting
American Short Line & Regional Railroad Association (ASLRRA)	3	Voting
American Train Dispatchers Department/BLE (ATDD)	1	Voting
Association of American Railroads (AAR)	12	Voting
Association of Railway Museums (ARM)	1	Voting
Association of State Rail Safety Managers	1	Voting
Brotherhood of Locomotive Engineers (BLE)	2	Voting
Brotherhood of Maintenance of Way Employees (BMWE)	2	Voting
Brotherhood of Railroad Signalmen (BRS)	2	Voting
Federal Transit Administration	1	Non-Voting
High Speed Ground Transportation Association	1	Voting
Hotel Employees & Restaurant Employees International Union	1	Voting
International Association of Machinists & Aerospace Workers	1	Voting
International Brotherhood of Boilermakers & Blacksmiths	1	Voting
International Brotherhood of Electrical Workers (IBEW)	1	Voting
Labor Council for Latin American Advancement	1	Non-Voting
League of Railway Industry Women	1	Non-Voting
National Association of Railroad Passengers (NARP)	1	Voting
National Association of Railway Business Women	1	Non-Voting
National Conference of Firemen & Oilers	1	Voting
National Railroad Construction & Maintenance Association	1	Voting
National Railroad Passenger Corporation (AMTRAK)	1	Voting
National Transportation Safety Board (NTSB)	1	Non-Voting
Railway Progress Institute (RPI)	1	Voting
Safe Travel America	1	Voting
Secretaria de Communicaciones y Transporte (Mexico)	1	Non-Voting
Sheet Metal Workers International Association	1	Voting
Tourist Railway Association Inc.	1	Voting
Transport Canada	1	Non-Voting
Transport Workers Union of American (TWU)	2	Voting
Transportation Communications International Union/BRC	3	Voting
United Transportation Union (UTU)	2	Voting

Report generated on: Thursday, April 12, 2001

RSAC Membership List

Organization		Voting/Non-Voting	Seats
Association of American Railroads (AAR)		***Voting***	***12***
Ameen, Pat	Member	AAR	
Dettmann, Charles	Member	AAR	
Duffy, Dennis	Member	UP	
Fisher, Allan C.	Member	Conrail	
Harris, Ed	Member	CN/IC	
Ice, Carl	Member	BNSF	
McBain, Jack T.	Member	CN	
Mogan, Dennis	Member	METRA	
Pagano, Philip A.	Member	METRA	
Pender, Pat A.	Member	UP	
Samuels, John M.	Member	NS	
Sizemore, Doug	Member	KCS	
Ward, Michael	Member	CSX	
Ackermans, Faye	Alternate	CP	
Bernard, Robert A.	Alternate	CSX	
Berrada, Sam	Alternate	CN	
Bromley, Steve	Alternate	CP	
Browder, William	Alternate	AAR	
Corcoran, Andrew P., Jr.	Alternate	NS	
Dalzell, John	Alternate	CN	
Gibson, John	Alternate	CSX	
Grady, James	Alternate	Conrail	
Grundmann, John	Alternate	BNSF	
Jacobi, Thomas	Alternate	UP	
Keane, Bob	Alternate	CN	
Leopold, Thomas	Alternate	KCS	
Lindsey, Al	Alternate	BNSF	
Mitton, Gary	Alternate	CN	
Moller, Jeffrey F.	Alternate	AAR	
Stengem, Greg	Alternate	BNSF	
Wehrmeister, Charles J.	Alternate	NS	
Wills, Doug W.	Alternate	UP	

RSAC Membership List

Organization		Voting/Non-Voting	Seats
American Association of Private Railroad Car Owners (AAPRCO)		***Voting***	***1***
Elliott, Diane	Member		
DeVerter, Paul L, II	Alternate		
American Association of State Highway & Transportation Officials (AASHTO)		***Voting***	***1***
Worley, Paul	Member		
Sonefeld, Otto	Alternate		
American Public Transportation Association (APTA)		***Voting***	***2***
Bauer, Ken	Member		
Waters, Kathryn D.	Member		
Hooper, Fran	Alternate		
Peacock, Thomas	Alternate		
American Short Line & Regional Railroad Association (ASLRRA)		***Voting***	***3***
Becht, Forrest L.	Member		
Kerbs, Glenn J.	Member		
Reilly, Matthew B., Jr.	Member		
Biscan, Ben	Alternate		
Simmons, Mark	Alternate		
American Train Dispatchers Department/BLE (ATDD)		***Voting***	***1***
Parker, James	Member		
Mundy, Chuck R.	Alternate		

RSAC Membership List

Organization		Voting/Non-Voting	Seats
Association of Railway Museums (ARM)		***Voting***	***1***
Johnson, James	Member		
Becker, Scott	Alternate		
Association of State Rail Safety Managers		***Voting***	***1***
Martin, Jerry	Member		
Baldwin, Ira	Alternate		
Fegles, Howard	Alternate		
Brotherhood of Locomotive Engineers (BLE)		***Voting***	***2***
Dubroski, Edward	Member		
Jones, Leroy D.	Member		
Harvey, Robert A.	Alternate		
McCoy, James L.	Alternate		
Brotherhood of Maintenance of Way Employes (BMWE)		***Voting***	***2***
Fleming, Mac A.	Member		
Inclima, Rick A.	Member		
Bolton, Bernadette	Alternate		
Dodd, Jed	Alternate		
Hussey, Kevin	Alternate		
Myron, Joel	Alternate		
Swanson, Paul	Alternate		
Wise, Henry	Alternate		
Brotherhood of Railroad Signalmen (BRS)		***Voting***	***2***
Mattingly, Joe L.	Member		
Pickett, Dan	Member		
DePaepe, Tim	Alternate		

RSAC Membership List

Organization		Voting/Non-Voting	Seats
Federal Transit Administration		***Non-Voting***	***1***
Fisher, Jerry	Member		
High Speed Ground Transportation Association		***Voting***	***1***
Bravo, Raul V.	Member		
Olekszyk, Phil	Alternate		
Hotel Employees & Restaurant Employees International Union		***Voting***	***1***
Monroe, Isacc R.	Member		
International Association of Machinists & Aerospace Workers		***Voting***	***1***
Cronk, Jay R.	Member		
Filipovic, Mark	Alternate		
International Brotherhood of Boilermakers & Blacksmiths		***Voting***	***1***
Racic, Milan	Member		
Scheer, Alan M.	Alternate		
International Brotherhood of Elecrical Workers (IBEW)		***Voting***	***1***
Davis, Daniel	Member		
Cobb, Ray	Alternate		
Hurtubise, Jean R.	Alternate		
Labor Council for Latin American Advancement		***Non-Voting***	***1***
Sanchez, Oscar	Member		
Padilla, Tony	Alternate		
League of Railway Industry Women		***Non-Voting***	***1***
Mullins, Linda	Member		
McGrath, Kathy	Alternate		
Sumara, Connie	Alternate		

RSAC Membership List

Organization		Voting/Non-Voting	Seats
Railway Progress Institute (RPI)		***Voting***	***1***
McDaniel, Ronald	Member		
Matthews, Robert A.	Alternate		
Safe Travel America		***Voting***	***1***
Johnson, Arthur	Member		
Horn, Roger A.	Alternate		
Secretaria de Communicaciones y Transporte (Mexico)		***Non-Voting***	***1***
Corzo-Cruz, Oscar S.	Member		
Lozada Bautista, Antonio	Alternate		
Sheet Metal Workers International Association		***Voting***	***1***
Garland, Dewey	Member		
Bauman, Richard S.	Alternate		
Buchanan, Donald C.	Alternate		
Hester, Jackie W.	Alternate		
Tourist Railway Association Inc.		***Voting***	***1***
McKenna, Francis G.	Member		
Payne, George	Alternate		
Transport Canada		***Non-Voting***	***1***
Burtch, Terry M.	Member		
Transport Workers Union of American (TWU)		***Voting***	***2***
Maslanka, Gary	Member		
McDonald, George J.	Member		
Czuczman, John	Alternate		

RSAC Membership List

Organization		Voting/Non-Voting	Seats
Transportation Communications International Union/BRC		***Voting***	***3***
Johnson, Richard A.	Member		
Napier, Marvin	Member		
Tully, Chris	Member		
Friedman, C. Marshall	Alternate		
Lewin, Hank	Alternate		
McDermott, Thomas P.	Alternate		
Novakovic, Alex	Alternate		
United Transportation Union (UTU)		***Voting***	***2***
Lineweber, Ray	Member		
Thompson, William	Member		
Brunkerhoefer, James M.	Alternate		
Mann, Lawrence M.	Alternate		
Stem, James A.	Alternate		

Meeting of the Railroad Safety Advisory Committee

The Mayflower
1127 Connecticut Avenue, NW, Washington DC 20036
April 23, 2001

AGENDA

9:30 am	**MEETING CONVENED**	*George A. Gavalla, Chairperson*
	Welcome Administration Officials; Greetings	*Acting Deputy Administrator*
	Proposed task: Conforming Accident/ Incident Regulations to new DOL/OSHA Requirements; Misc. Reporting Guide Issues	*Grady Cothen/Robert Finkelstein*
	Accident/Incident Reporting	*Robert Finkelstein*
	Cab Working Conditions	*Brenda Hattery*
	Blue Signal	*Doug Taylor*
10:30-10:45	**BREAK**	
	RSAC Website	*Mickey Grackin/Steve Thompson*
	Other Working Group Activity - Status Report	*Grady Cothen*
12:00 - 1:00 pm	**LUNCH**	
1:00	Pending rulemaking petitions; future tasks	*Grady Cothen*
	Tasking of Training and Qualification of Safety-Critical Personnel	*George Gavalla*
	Safety Assurance and Compliance Program	*Ed Pritchard*
	Recap and General Discussion Planning-Scheduling-Administrative	*George Gavalla*
3:00 pm	**ADJOURN**	

TASK STATEMENT SUMMARY
Revisions to Accident/Incident Reporting
49 CFR Part 225

The Occupational Safety and Health Administration (OSHA) recently revised regulations on reporting injuries in the work place. There are important changes in the definition of First Aid and medical treatment, and clarification about use of non-prescription medications. See *Occupational Injury and Illness Recording and Reporting Requirements*, 66 FR 5916-6135, dated January 19, 2001. OSHA's Final Rule becomes effective on January 1, 2002.

To accommodate changes in OSHA's regulations, FRA needs to revise its own injury codes and narratives, cause codes and narratives, and circumstance codes and narratives.

Potentially, there will also be changes to FRA Accident/Incident Form Nos.: 6180.78, 6180.81, 6180.54 and 6180.55a.

In addition, 49 CFR 225 needs revisions to clarify requirements for telephonic notifications.

Finally, the *FRA Guide for Preparing Accidents/Incidents Reports* will be reviewed and updated to conform with OSHA's injury and illness recording and reporting requirements.

U.S. Department
of Transportation

**Federal Railroad
Administration**

Railroad Safety Advisory Committee
Task Statement:
Accident/Incident Reporting /Conformity
Task No. : 2001-1

Date presented to the RSAC: April 23, 2001

Purpose:

To conform FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Description:

On January 19, 2001, OSHA published revised regulations for Occupational Injury and Illness Recording and Reporting (66 FR 5965). FRA accident/incident regulations pertaining to occupational injury and illnesses are patterned after the prior OSHA regulations and must be maintained in general conformity with those regulations to permit comparability of data and integration of railroad industry data into national statistical databases. OSHA's Final Rule becomes effective on January 1, 2002. Accordingly, FRA needs to revise its own injury codes and narratives, cause codes and narratives, and circumstance codes and narratives (as set forth in the Reporting Guide) as soon as feasible. Minor administrative issues have also arisen since the last general revision of Part 225 on January 1, 1997 that should be considered in relation to possible amendments to the regulations or the Reporting Guide. The Committee may also be requested to offer recommendations concerning responses to public comments on a proposed rule or draft Reporting Guide, as time permits.

Issues requiring specific report:

The committee should consider, and specifically report on, the following issues:
(1) Recommended changes to the regulations and Reporting Guide to achieve conformity with revised OSHA regulations and guidance, including consideration of codes, narratives, and forms.
(2) Any appropriate perfecting changes to the regulations or Reporting Guide responsive to issues identified by FRA in its administration of the current accident/incident program.

Refer to:

Accident/Incident Working Group

Target dates:

9//15/2001 Report recommended changes

Disposition: **Date:**

U.S. Department
of Transportation

Federal Railroad Administration

Railroad Safety Advisory Committee
Nomination Form for Working Group Membership
On Accident/Incident Reporting Conformity

Each RSAC member organization should indicate its interest in participating in a working group by designating the individual representatives it wishes to nominate for RSAC member representation on the group in the space allotted below. RSAC organizations should also designate alternate members to serve when working group members are unable to attend meetings or to act on behalf of the organization. Please keep the following in mind in making nominations:

- Working groups should be comprised of RSAC member organizations that are directly affected by a particular task, with actual working group composition representing a fair balance of interests actually implicated in a particular task.
- RSAC member organizations must nominate representatives for working group membership who are authorized and empowered to speak for their organization during working group meetings.
- Working group members and alternates must be named by an authorized official of the ***organization*** they represent (e.g., AAR, UTU). Where a substitution is necessary during the process, the RSAC member organization must submit the substitute designation in writing. Designations received from individual RSAC members or working group members are not acceptable, unless the member organization has notified FRA that the individual is authorized to make designations on its behalf.

NAME OF WORKING GROUP: Accident/Incident Reporting/Conformity

1. RSAC MEMBER ORGANIZATION:

2. WORKING GROUP MEMBERSHIP NOMINATION(S):
   (Provide mailing address, telephone, fax numbers, and e-mail address)

3. WORKING GROUP ALTERNATE MEMBERSHIP NOMINATION(S):
   (Provide mailing address, telephone, fax numbers, and e-mail address)

By authorized RSAC Member Organization Representative:

_____

{Signature}

Federal Register

Tuesday,
January 2, 2001

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 229
Locomotive Cab Sanitation Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA 2000–8545, Notice No. 1]

RIN 2130–AA89

Locomotive Cab Sanitation Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend its regulations by adding standards that address toilet and washing facilities for employees who work in locomotive cabs. The proposal provides exceptions for certain existing equipment and operations, and establishes servicing requirements.

DATES: *Written Comments:* Written comments must be received on or before March 5, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: A public hearing will be held, if requested, in Washington, D.C. to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. FRA will announce at a later date in the **Federal Register** if a hearing has been requested and the date and location of the hearing.

ADDRESSES: *Written Comments:* Submit one copy to the Department of Transportation Central Docket Management Facility located in Room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed rule will be available for inspection at this address and on the Internet at *http://doms.dot.gov.* Docket hours at the Nassif Building are Monday-Friday, 10:00 a.m. to 5:00 p.m., excluding Federal holidays. Persons desiring notification that their comments have been received should submit their comments with a stamped, self-addressed postcard. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

Public Hearing: If requested by a member of the public, the date and location of a public hearing will be announced in this publication. Requests for a public hearing must be in writing, and must be addressed to the FRA docket clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Brenda Hattery, Office of Safety Compliance, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6326), or Christine Beyer, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6027).

SUPPLEMENTARY INFORMATION:

Background

I. Statutory and Regulatory Framework

The Federal Railroad Administration (FRA) has broad statutory authority to regulate all areas of railroad safety. Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date all of the acts were repealed and their provisions were recodified into Title 49. The older safety laws were enacted in piecemeal approach and addressed specific fields of railroad safety. Pertinent to this proceeding, the Locomotive Inspection Act (the "LIA"), enacted in 1911, prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. (Formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703.) In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, the Congress enacted the Federal Railroad Safety Act in 1970 (the "Safety Act"). (Formerly 45 U.S.C. 421, 431 *et seq.*, now Subtitle V of Title 49.) The Safety Act grants the Secretary rulemaking authority over all areas of railroad safety and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator. (49 CFR 1.49.)

Pursuant to this statutory authority, FRA promulgates and enforces a comprehensive regulatory program to address railroad track, signal systems, railroad communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of workplace safety, the agency has issued a variety of standards designed to protect the health of railroad employees. For instance, FRA promulgated ladder and handhold requirements for rail equipment in order to prevent employee falls (49 CFR Part 231), and requires locomotive cab floors and passageways to remain clear of debris and oil to prevent employee slips, trips, and falls (49 CFR 229.119). In Part 218, FRA requires blue signal protection to prevent employees working on railroad equipment from injuries due to the unexpected movement of the equipment. FRA addresses the risk of falling from railroad bridges and of being struck by moving trains in 49 CFR Part 214.

As a general rule, FRA exercises its statutory jurisdiction over railroad employee working conditions where employees are engaged in duties that are intrinsic to railroad operations, that could not occur in typical industrial settings, and when the hazard falls within the scope of FRA's expertise to regulate. Often, railroad working conditions are so unique that a regulatory body other than FRA would not possess the requisite expertise to determine appropriate safety standards. Historically, the concept of "railroad safety" has been viewed to include the health and safety of employees when they are engaged in railroad operations. In its Statement of Policy concerning employee workplace safety published in 1978, FRA stated

> The term "safety" includes health-related aspects of railroad safety to the extent such considerations are integrally related to operational safety hazards or measures taken to abate such hazards.

43 FR 10585. Hazards that impact the health of railroad employees engaged in railroad operations may also result in adverse impacts on railroad safety, and so there is often a logical connection between railroad safety and employee health.

In part 229 of Title 49 of the Code of Federal Regulations, FRA established minimum federal safety standards for locomotives. These regulations prescribe inspection and testing requirements for locomotive components and systems, and minimum locomotive cab safety requirements. However, FRA's existing locomotive safety standards do not require sanitation facilities for employees working in the cab.

The statutory and regulatory treatment of locomotive cab sanitation by the pertinent federal and state bodies is complex, and has caused some confusion in the industry. For purposes of this rulemaking, it is important to understand where the legal tensions occur. Generally, requirements for sanitation in the workplace are governed by the U.S. Occupational Safety and Health Administration (OSHA); [1] however a Federal agency can oust OSHA jurisdiction by issuing sanitation standards of its own, as FRA

[1] *See,* 29 CFR Part 1910 (general industry standards); 29 CFR Part 1926 (construction industry standards); 29 CFR Part 1917 (marine terminals); 29 CFR Part 1918 (longshoring operations); and 29 CFR Part 1928 (agricultural operations).

toilet paper. During the winter months, FRA inspectors noted that certain toilet systems would freeze and become inoperable. Of the cabs surveyed, approximately thirty percent were deficient in some manner related to the use of sanitation facilities.

During the survey, FRA determined that both employees and railroads play a role in the condition of sanitary facilities; poor sanitary conditions aboard locomotives are caused by inadequate maintenance and/or heavy use or misuse by operating crews. FRA determined that most railroad carriers have programs in place to service toilet and washing units, and that the program requirements often vary from property to property depending on degree of use, toilet system in place, and weather conditions. In addition, FRA found that adherence to the servicing programs is uneven throughout the industry, and that in many situations, poor servicing is the primary cause of unsanitary, offensive sanitation facilities.

FRA also determined that nearly all of the cleaning agents used to disinfect and deodorize locomotive cabs are over-the-counter products available to the general public. However, a small percentage of the cleaning agents used involve health risks, and so management supervision and employee training must take place in order to safeguard employee health. The Report explains that the locomotive safety standards (49 CFR part 229) do not require sanitation facilities in locomotive cabs, and some of the oldest equipment surveyed had no sanitation facilities on board. The Report also notes that there is some disparity in the legal treatment of sanitation in locomotive cabs among state and federal regulatory and enforcement bodies (as discussed in greater detail above), and confusion exists among industry members concerning applicable standards and guidelines.

In conclusion, the Report notes FRA's concern about the potential for disparate regulatory treatment of sanitation in locomotives, and the unsanitary conditions that existed on some properties. Nonetheless, given the significant role that basic servicing plays in creating a sanitary workplace, and the relative ease with which servicing programs may be instituted, FRA was hopeful that the issue of locomotive sanitation could be resolved through management and labor cooperation to resolve the problem of absent, defective, or unsanitary facilities on locomotive cabs.

III. Railroad Safety Advisory Committee Recommendations to FRA

Following publication of the Report, FRA continued to receive employee complaints about the state of sanitation in locomotive cabs, and the health and safety risks associated with working in an unsanitary area. Generally, throughout the national railroad system, employees continued to encounter dirty conditions and facilities in need of maintenance, and in some circumstances, difficulty in obtaining access to facilities at all.

FRA also received complaints from employees of one carrier concerning the disposal method required by a particular sanitation system in use. The system, by design, involves the placement and temporary storage of plastic bags containing untreated waste into sealed waste containers, and presents perceived health concerns to some who handle the bags, and others in proximity to the waste containers. In addition, there were concerns about the expansion of this system as the railroad's territory increased, the increase of 'power sharing' arrangements among the carriers, and the administrative difficulties that would arise in maintaining disparate systems as railroad equipment is mixed among carriers.

Finally, some State agencies expressed frustration with FRA concerning the practical effect of the interplay of OSHA's program, the broad preemption provisions found in the LIA, and the uneven treatment given locomotive sanitation by the state and federal courts. The presence of LIA preemption and the inconsistent application of locomotive cab sanitation standards prevented certain State agencies from regulating this area of sanitation.

In light of these concerns, FRA determined that cab sanitation must be revisited and addressed so that cab employees would have access to adequate sanitary facilities, and to ensure uniform application of the law. Despite the considerable acrimony that had developed in the industry surrounding this issue, FRA remained convinced that it should be addressed cooperatively, with the assistance of the stakeholders who possess the knowledge and expertise to resolve the problem effectively. Therefore, on June 24, 1997, FRA presented the subject of locomotive cab working conditions, including sanitation, to the Railroad Safety Advisory Committee (RSAC).

RSAC was formed by FRA in March 1996 to provide a forum for consensual rulemaking and program development. The Committee includes representation from all of the agency's major customer groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If the working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

When FRA presented the subject of locomotive cab working conditions to RSAC in June 1997, the agency stated the purpose of the task as follows: to safeguard the health of locomotive crews and to promote the safe operation of trains. RSAC accepted this task, formed a Locomotive Cab Working Conditions Working Group ("Working Group"), and designated this assignment Task No. 97–2. As to sanitation, RSAC asked the Working Group to

> Research comparable workplace requirements in an effort to develop minimum acceptable regulations, guidelines, or standards as appropriate for the locomotive cab environment.

The Working Group established by RSAC consists of representatives of the following organizations, in addition to FRA:

American Association of State Highway & Transportation Officials
American Public Transit Association
American Short Line and Regional Railroad Association
Association of American Railroads
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes (Nonvoting Member)
International Brotherhood of Electrical Workers
National Railroad Passenger Corporation (Amtrak)
Railway Progress Institute
Sheet Metal Workers' International Association
Transport Workers Union of America
United Transportation Union

The Working Group's goal was to produce recommendations for locomotive cab sanitation standards

is proposing to do in this proceeding.[2] OSHA's sanitation standards generally apply to permanent places of employment, and some courts have determined that a locomotive constitutes a 'permanent place of employment' for purposes of OSHA's jurisdiction.[3] However, by operation of an existing legislative option, a state may withdraw from the Federal OSHA program, and develop and enforce its own occupational safety and health regulations.[4] If a locomotive is situated in a 'Federal-OSHA state,' the Federal OSHA standard would most likely apply, so long as the pertinent reviewing court concurred with the determination that a locomotive constitutes a permanent place of employment. However, if the locomotive resides in a 'State-Plan state,' any state locomotive sanitation standard may be nullified because the LIA has been interpreted to occupy the field of locomotive safety, including appurtenances in locomotives. Consequently, the LIA would preempt state provisions relating to appurtenances in locomotives,[5] and federal courts have held that a toilet constitutes an appurtenance.[6] Conversely, and despite the prevailing alternate view, certain state courts in 'Federal-OSHA states' have ruled that the LIA does not preempt state regulation of flush toilets on locomotives, and those states have promulgated and enforce such standards within their boundaries.[7]

In 1992, Congress enacted Section 10 of The Rail Safety Enforcement and Review Act (RSERA) (Public Law 102–365, September 3, 1992, codified at 49 U.S.C. 20103, note) in response to concerns raised by employee organizations, congressional members, and recommendations of the National Transportation Safety Board concerning working conditions in locomotive cabs. In this legislation, Congress included mandates concerning locomotive crashworthiness and cab working conditions. Section 10 of RSERA, entitled Locomotive Crashworthiness and Working Conditions, required FRA "to consider prescribing regulations to improve the safety and working conditions of locomotive cabs" throughout the railroad industry. In order to determine whether regulations would be necessary, Congress asked FRA to

> assess the extent to which environmental, sanitary and other working conditions in locomotive cabs affect productivity, health and the safe operation of locomotives.

The interest Congress placed on locomotive cab sanitation reflected concerns for railroad safety, employee productivity, and the serious health consequences that may result if employees are exposed to unsanitary conditions or lack access to facilities. It is widely known that exposure to human fecal matter or untreated sewage waste can lead to diarrheal diseases such as amebiasis, giardiasis, shigellosis and viral diseases such as hepatitis. Transmission of some illnesses can occur through physical contact with waste, or with the toilet or other surfaces used by an infected human. Given the right environmental conditions, transmission may also occur through inhalation of affected microorganisms. In addition, disease transmission may occur through hand-to-mouth ingestion after physical contact with an infected source. The risk of contracting these illnesses underscores the importance of maintaining clean, operable toilet and washing facilities in the workplace, including locomotive cabs.

In addition to the disease transmission concerns outlined above, there are health affects that may arise when access to toilet facilities is limited or prevented. Healthy adults consuming the recommended amounts of fluids can expect to void once every four hours during the day and once during the night. The urination process begins when the kidneys filter waste and water from the blood to form urine. The urine travels to the bladder and the nervous system sends 'full' signals to the muscles that it is time to urinate. If urination doesn't occur when needed, incontinence, urinary tract infections, and kidney infections may occur. Prolonged distention of the bladder may lead to a disturbance of the elastic components of the bladder wall, which could weaken the evacuation power of the bladder. When the bladder is unable to empty completely, residual urine remains and can cause infection. Delaying bowel movements can lead to chronic constipation and other intestinal problems, and chronic constipation is often a factor in abnormal bladder emptying. In addition, a variety of health conditions may alter or increase the need to urinate and defecate, including pregnancy, benign prostate hypertrophy, prostate cancer, prostatitis, renal stone disease, hypertension, diabetes, stroke, and conditions of the central nervous system and spinal cord. These factors underscore the importance of providing adequate access to toilet and washing facilities for employees in the workplace.[8]

In response to the Congressional mandate set forth in Section 10 of RSERA, FRA studied a variety of working conditions in locomotive cabs, including sanitation, noise, temperature, air quality, ergonomics, and vibration. FRA prepared the Locomotive Crashworthiness and Cab Working Conditions Report to Congress ("Report"), dated September 1996, that outlines the results of these studies. (The Report is available for review in the docket of this matter.)

II. The Report to Congress

FRA conducted a survey of locomotive cab sanitation facilities and an evaluation of the chemicals used to clean, disinfect, and deodorize toilets. The primary focus of the survey was equipment owned by Class I railroad carriers, but units operated by small entities were also included in the study. FRA found a wide range of conditions in the course of the survey. The conditions varied due to many factors, including weather, type of sanitation system in place, carrier maintenance and service programs, and locomotive model. In addition, some locomotives surveyed were not equipped with sanitation facilities.

FRA surveyed 234 locomotives during both typical and environmentally extreme working conditions. As the Report states, FRA found unsanitary, unpleasant conditions, and in some instances, inoperable units. FRA inspectors observed dirty floors and toilet seats, missing toilet seats, poor ventilation, offensive odors, and lack of

[2] 29 U.S.C. 653(b)(1).

[3] *State of Maine* v. *Springfield Terminal Ry.*, CV–90–258, citing *Gade* v. *National Solid Waste Management Ass'n*, 505 U.S. 88 (1992).

[4] 29 U.S.C. 667.

[5] *Napier* v. *Atlantic Coast Line RR.*, 272 U.S. 605 (1926).

[6] *CSX Transportation* v. *Pitz*, 699 F.Supp. 127 (W.D. Mich. 1988).

[7] *Norfolk and Western Ry.* v. *Pennsylvania Public Utility Comm'n*, 413 A.2d 1037 (Pa. 1980).

[8] *See*, Rowland RG, Foster RS, Donohoe JP, *Adult and Pediatric Urology*, St. Louis, Mosby-Year Book, Inc. (1996); Barry MJ, Fowler, FJ, Bin L, Pitts CJ, Mulley AG, *The Natural History of Patients with Benign Prostatic Hyperplasia as Diagnosed by North American Urologists*, J. Urol., 157, 10–15, (1997); Lapides, J., *The Key to Urinary Infection*, The Female Patient, 5, 11–13 (1980); Lapides, J., *Primary Cause of Recurrent Urinary Tract Infection in Women*, Journal of Urology, 100, 552–555 (1968); Darlow, H.M. and Bale, W. R., *Infective Hazards of Water-Closets*, Lancet 1: 1196–1200 (1959); Hendlev, J., Wenzel, H., Gwaltney, H., *Transmission of Rhinovirus C Colds by Self-Inoculation*, New England Journal of Medicine, 288, 1361–1364 (1973); Gaber, C., Wallis, C., and Melnick, J., *Microbiological Hazards of Household Toilets: Droplet Production and the Fate of Residual Organisms*, Applied Microbiology 30: 229–236 (1975); U.S. Occupational Safety and Health Administration, *Field Sanitation, Final Rule*, 52 FR 16050 (1987).

Water filters may be used only if they are maintained to prevent contamination. Constant temperature bottles and other containers used for storing potable water must be kept clean and subjected to effective bacteriological treatment as necessary to prevent any contamination. 21 CFR 1250.42. (In another section of part 1250, FDA defines "new railroad conveyance" as "any conveyance placed into service for the first time after July 1, 1972." 21 CFR 1250.51. Presumably this definition applies to all requirements in part 1250, but that is unclear from the structure of the subpart.)

FDA has authority to approve water systems. Generally, FDA approves watering points that meet EPA's Primary Drinking Water Regulations, and where the methods of delivery, facilities used for delivery, and the sanitary conditions surrounding the delivery of water prevent the introduction, transmission, or spread of communicable diseases. This approval may be based on the investigations of State departments of health. 21 CFR 1240.83. The FDA will approve the treatment of water aboard conveyances if the system or apparatus produces potable water. This approval may be based on investigations conducted by State representatives. 21 CFR 1240.90.

The states may regulate the quality and consumption of water through their general public health authority. Generally, the states define and treat the subject of potable water in the same way that federal agencies do. The term is defined in a number of ways, but all have essentially the same meaning: Water that has been approved by the State department of health (Tennessee); water that is fit for human consumption in accordance with accepted water supply principles and practices (Illinois); water that complies with the standard for water systems under the California Safe Drinking Water Act (California); water that is safe for drinking, culinary, and domestic purposes, and which meets the requirements of the department of health (Colorado); or water having bacteriological, physical, radiological, and chemical qualities that make it safe and suitable for human drinking, cooking, and washing uses (Louisiana). The states generally require that only potable water be used for human consumption, and any sources that contain nonpotable water must be marked as unsuitable for consumption.

Toilet and Washing Facilities

OSHA's general industry standards (29 CFR part 1910) and construction industry standards (29 CFR part 1926) set forth federal standards for toilet and washing facilities that apply to most workplaces. The general industry standards require employers to provide toilet facilities at all places of employment, except where mobile crews or typically unattended work locations are involved. 29 CFR 1910.141(c). In the case of mobile crews and unattended work stations, employers may avoid providing toilet facilities, so long as "these employees working at these locations have transportation immediately available to nearby toilet facilities." OSHA defines toilet facility as a fixture maintained within a toilet room for the purposes of defecation or urination, or both. 29 CFR 1910.141(a)(2). The general industry standards require employers to provide specific numbers of toilets, based on the number of employees at the site. The sewage disposal method must not endanger the health of the employees. 29 CFR 1910.141(c).

With regard to temporary labor camps, OSHA's general industry standards require employers to provide toilet facilities "adequate for the capacity of the camp." 29 CFR 1910.142(d). The toilet rooms must be located within 200 feet of the sleeping rooms, and the number of toilets provided must be in a ratio of one per 15 employees. 29 CFR 1910.142(d). The toilet rooms must be lighted naturally or artificially with other "safe lighting at all hours of the day and night," and "an adequate supply of toilet paper must be provided." Toilets must "be kept in a sanitary condition" and "cleaned at least daily." 29 CFR 1910.142(d).

OSHA's construction standards require employers to provide toilets at all sites. Under temporary field conditions, employers must provide at least one toilet. 29 CFR 1926.51(c). However, job sites not equipped with a sanitary sewer must have a privy, chemical toilet, recirculating toilet, or combustion toilet, unless prohibited by local health codes. 29 CFR 1926.51(c)(3). These requirements do not apply to mobile crews so long as the crews have "transportation readily available to nearby toilet facilities." 29 CFR 1926.51(c)(4).

In addition to the construction and general industry standards, OSHA has promulgated standards for marine work sites, longshoring operations, and agricultural workers. The standards for marine terminals (29 CFR 1917.127) and longshoring operations (29 CFR 1918.95) are nearly identical. Marine terminal employers must provide "accessible washing and toilet facilities sufficient for the sanitary requirements of employees." Longshoring operations must "provide accessible washing and toilet facilities sufficient for the sanitary requirements of employees" that are "readily accessible at the work site." The marine and longshoring facilities must include water, soap, hand towels or blowers, and fixed or portable toilets with latch-equipped doors, and the washing and toilet facilities must "be regularly cleaned and maintained in good order."

OSHA's regulations for field sanitation in the agricultural industries (29 CFR 1928.110) apply to any agricultural establishment where 11 or more employees are engaged on any given day in hand-labor operations in the field. OSHA defines toilet facility here as

> a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination, which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies.

These toilet facilities must be "adequately ventilated," screened, and have doors that can be locked. The toilet facilities must be "maintained in accordance with appropriate public health sanitation practices," must "be operational and maintained in clean and sanitary condition," and "disposal of wastes from facilities shall not cause unsanitary conditions."

FDA has promulgated standards for toilet facilities on conveyances. Toilet and lavatories for food-handling employees must be of "suitable design and construction" and must be "maintained in a clean condition." 21. CFR 250.38. In addition, FDA requires that

> where toilet and lavatory facilities are provided on conveyances they shall be so designed as to permit ready cleaning. On conveyances not equipped with retention facilities, toilet hoppers shall be of such design and so located as to prevent spattering of water filling pipes or hydrants.

21 CFR 1250.50. When railroad conveyances that are "occupied or open to occupancy by travelers, are at a station or servicing area," toilets must be kept locked unless measures are taken to prevent contamination of the area or station. 21 CFR 1250.51(c). Human waste may not be discharged from any new railroad conveyance, except at servicing areas approved by the FDA. However, human waste that has been treated to prevent the spread of communicable diseases may be discharged from conveyances, except at stations. 21 CFR 1250.51(a). New railroad conveyance used here means any equipment placed into service after

warranted by an assessment of the available information and data, including the FRA survey of sanitary facilities and complaint information. The Working Group, or its designated subgroup, met regularly over a period of 15 months to discuss locomotive cab sanitation in the railroad industry. The discussions covered all aspects of sanitation facilities in the locomotive cab, including toilet systems, washing facilities, potable water, ventilation, lighting, trash disposal, provisions for toilet paper and bottled water, servicing, and unique operations or characteristics that might require specialized regulatory treatment.

As a result of its deliberations, the Working Group provided to the full RSAC recommendations for locomotive cab sanitation standards. On December 7, 2000, the full RSAC voted to forward these recommendations to FRA for rulemaking action, and in large measure, this Notice of Proposed rulemaking (NPRM) incorporates the Working Group's product. FRA worked closely with the Working Group in the development of its recommendations, and believes they comprehensively and effectively address sanitation for cab employees. FRA has greatly benefitted from the open, informed exchange of information that has taken place in the Working Group meetings. Although all participants may not agree on each recommendation offered, there is general consensus among labor, management, and manufacturers concerning the primary principles FRA sets forth in this NPRM. FRA believes that the expertise the Working Group industry representatives possess enhance the value of the recommendations, and FRA has made every effort to incorporate them in this proposal. Also, FRA and the Working Group will reassemble after the comment period for this NPRM has closed to consider all comments received, and make recommendations concerning development of a final standard.

IV. Regulatory Treatment of Sanitation by Other Governmental Agencies

In addition to incorporating many of the recommendations of the Working Group in this proposal, FRA reviewed the existing body of regulatory requirements concerning sanitation in the workplace across the governmental spectrum, in order to gain insight on useful regulatory approaches to a subject that is fraught with subjectivity and potential enforcement difficulties. FRA has utilized language and fundamental concepts from these standards, where appropriate, to ensure that railroad employees receive at least an equivalent level of protection as other employees in the United States. Listed below is a summary of the regulatory treatment of potable water, toilet and washing facilities, and access to facilities, which FRA reviewed in preparation of this proposal. This summary is not exhaustive, but attempts to capture the overall regulatory approach taken to the topic of sanitation in the workplace.

Potable Water

In common parlance, potable water is water that is fit or safe to drink. Generally, regulations promulgated by the U.S. Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA) govern the quality and public consumption of water. As part of FDA's program to control communicable diseases (21 CFR part 1240) and to control interstate conveyance sanitation (21 CFR part 1250), FDA requires operators of a conveyance engaged in interstate traffic to provide only potable water for drinking and culinary purposes. 21 CFR 1240.80 and 1250.82. Interstate traffic is "the movement of any conveyance or the transportation of persons or property" within a State and between states, but does not include movement exclusively for repair, rehabilitation, or storage. 21 CFR 1240.3(h). The term "conveyance" means any land or air carrier, and most passenger ships and towing vessels. 21 CFR 1250.3(e).

OSHA regulates the quality of water in most workplaces, and requires employers to provide potable water for drinking, washing, and cooking. 29 CFR 1910.141(b), 29 CFR 1926.51(a). These OSHA standards would not apply to workplaces covered by another federal agency's regulations on point; where Memoranda of Understanding between OSHA and other federal agencies oust OSHA's authority; where operation of statutory preemption clauses oust OSHA's authority; or where OSHA has approved a State to address occupational safety and health issues. 29 U.S.C. 651, *et seq.* (For the most part, states that have chosen to run their own occupational safety and health program, issue standards quite similar to the federal OSHA standard, except where a local concern requires more rigorous treatment.)

FDA defines potable water as water that meets EPA's Primary Drinking Water Regulations, which are set forth in 40 CFR part 141. EPA's primary drinking water standards do not succinctly define potable water; rather, the standards set maximum contaminant levels (MCL's) for organic and inorganic chemicals and contaminants, turbidity, radium, particle radioactivity, and other hazardous agents that may not be exceeded in public water systems. The EPA standards also prescribe monitoring, notification, filtration, and disinfection requirements, and address the control of lead and copper in public water systems. Therefore, FDA requires public water systems used for human consumption to meet all of the MCL's and administrative standards set forth in EPA's standards.

OSHA defines potable water in essentially identical fashion [29 CFR 1910.141(a)(v), 29 CFR 1926.51(a)(6)], but the definition includes an outdated citation, which may unnecessarily confuse the issue. OSHA states that potable water is water that meets the quality standards set forth in the U.S. Public Health Service Drinking Water Standards, located at 42 CFR part 72. The Public Health Service administered federal safe drinking water programs prior to EPA, but EPA's current standards (40 CFR part 141) supersede the old regulations referred to in OSHA's definition.

Where nonpotable water is in use, FDA and OSHA require operators and employers to post signs to indicate that the water is not suitable for drinking, washing, or culinary purposes. 29 CFR 1910.141(b)(2), 29 CFR 1926.51(b), 21 CFR 1250.67(b). In addition, systems that carry nonpotable water or other nonpotable substances must be designed and operated to prevent backflow or seepage into the potable water system. 29 CFR 1910.141(b)(2); 29 CFR 1926.51(b); 21 CFR 1250.30(d), 1250.42, and 1250.67. Nonpotable water may be used for cleaning work premises in limited circumstances and where the nonpotable water doesn't contain unsanitary or harmful products such as chemicals and fecal coliform. Nonpotable water may not be used for cleaning areas where food preparation takes place, or in toilet, shower or wash rooms. 29 CFR 1920.141(2).

FDA requires water systems in conveyances to be "complete and closed from the filling ends to the discharge taps, except for protected vent openings." In addition, filling pipes or connections used for filling tanks on conveyances, must be positioned on both sides of all new railway conveyances and on existing conveyances when they undergo heavy repairs. The filling connections must be easy to clean, and located and protected to minimize the risk of contamination. On all new or reconstructed conveyances, water coolers must be an integral part of the closed water system.

the American Conference of Governmental Industrial Hygienists. The standard requires toilet rooms to be provided with a minimum ventilation rate of 35 cubic feet of air per minute, per water closet or urinal installed. 25 TAC section 295.106(k). An "adequate supply of toilet paper with holder shall be provided at every water closet." 25 TAC section 295.106(n). The Texas standard also permits the use of chemical toilets, so long as they are maintained "in a sanitary condition" and are the type approved by local health authorities. 25 TAC section 295.106(q).

Also, Texas has issued sanitation regulations that apply to temporary places of employment, including maintenance-of-way operations on railroads, agricultural operations, transitory or seasonal work, and work of a mobile nature that may involve a series of locations and movement between them. 25 TAC section 295.161. These regulations do not apply to places of employment already covered by federal OSHA standards or to the operation of railroad rolling stock. Employers who have no more than "6 employees working at a temporary place of employment on any work day may, on such days," are exempt from providing toilet and hand washing facilities, so long as the employer arranges for "immediate transportation" to nearby facilities. Employers must provide toilet facilities for all temporary places of employment, that are "readily accessible to all employees during all working hours and rest periods." The facility may be fixed or portable. 25 TAC section 295.166(a). Toilet facility is a "plumbing device for the purpose of defecation or urination, or both, including water closets and biological or chemical toilets and urinals." 25 TAC section 295.162. Toilet rooms and facilities must be

> maintained in a sanitary condition, free of objectionable toilet odors, during all work hours and rest periods. * * * An adequate supply of toilet paper in a suitable holder shall be maintained for each toilet. Covered waste receptacles shall be provided in all toilet rooms used by women.

25 TAC section 295.166(a)(6). Texas has one of the few standards that attempts to define "sanitary condition." It is "that condition of good order and cleanliness which precludes the probability of disease transmission." 25 TAC section 295.162.

This Texas standard also sets specifications for toilets at fixed facilities and portable toilets. At fixed facilities, the toilets must be in a compartment equipped with a latch, installed so that the space around it can be easily cleaned, and provided with some sort of ventilation. Portable toilet facilities must be readily accessible, private, ventilated mechanically or by use of screening, and where waste is stored in a tank, the tank must be vented to the outside. 25 TAC section 295.166(b). In temporary places of employment, employers must provide hand washing facilities that are convenient and maintained in a sanitary condition. They must have running, potable water, a "suitable cleansing agent," and hand towels and proper receptacles for disposal. 25 TAC section 295.167(a).

Access to Sanitation Facilities

The federal OSHA general industry and construction industry standards require employers to provide sanitation facilities at nearly all work sites. However, where mobile crews or unattended work locations are involved, sanitation facilities are not required on-site so long as employees "have transportation immediately available to nearby toilet facilities" that otherwise meet the federal requirements. 29 CFR 1910.141; 29 CFR 1926.51(c). In addition to the concept of the presence of facilities, the employer must permit employees to use the available facilities as the need arises. In a recent interpretation released April 6, 1998, OSHA explains that employers may not impose unreasonable restrictions on employee use of sanitary facilities. In support of this interpretation, OSHA states that this view is implicit in the language of the regulation. Furthermore, OSHA states that individuals vary greatly as to the frequency with which they need to use sanitary facilities. This is due to a variety of factors, including pregnancy, stress incontinence, prostatic hypertrophy, use of certain medications, environmental factors such as cold temperatures, high fluid intake, and diet. Access to toilet facilities as needed is critical to preventing the adverse health affects that may develop from voluntary retention.

OSHA regulates access to sanitary facilities in the marine terminal, longshoring, and agricultural workplaces as well. In the marine terminal standards, the access issue is handled minimally: "the employer must provide accessible washing and toilet facilities sufficient for the sanitary requirements of employees." 29 CFR 1917.127 (a). The treatment is similar in the longshoring regulation: "Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the work site." 29 CFR 1918.95(a).

OSHA's agricultural field sanitation standards (29 CFR 1928.110) provide more detail in outlining how an employer must provide access to sanitary facilities. Toilet and hand washing facilities must be "accessibly located" and in close proximity to each other. The facilities must be located "within a one-quarter mile walk" of each hand laborer's location in the field. If this is not possible because of the local terrain, the facility must be located "at the point of closest vehicular access." Also, access to on-site toilet and hand washing facilities is not required at all for employees who perform field work for a period of 3 hours or less, including transportation time to and from the field during the work day. Employers must notify employees of the location of the sanitation facilities and water, and must give employees "reasonable opportunities during the workday to use them." OSHA also requires agricultural employers to explain the importance of good hygiene, such as using all facilities, drinking sufficient water, washing hands, and so forth.

For the most part, the states regulate access to sanitation facilities in similar fashion. There are a few notable exceptions. Texas' standard for sanitation at temporary places of employment requires that where a site has only 6 employees on any given work day, the employer may avoid providing on-site facilities so long as the employer has arranged for "immediate transportation for these persons to travel to and from nearby facilities." 25 TAC 295.161(d). Also, the Texas standard sets a maximum unimpeded walking distance of no more than 440 yards (400 meters or ¼ mile) from the work site to the facility. If the walk is impeded (requires some climbing), the distance must be shorter, and not to exceed 5 minutes. If it is not possible to comply with this travel distance, the employer must provide facilities at the nearest possible location, and must arrange for transportation during both work and rest periods for immediate travel to and from the facilities. The time needed to reach the facility may not exceed 5 minutes. 25 TAC 295.161(f). The Texas sanitation standard for temporary workplaces also requires that facilities be "readily accessible to all employees during all working hours and rest periods." 25 TAC 295.166(a).

North Dakota has issued sanitation regulations that address access in a different manner than OSHA. The North Dakota standard requires facilities to be

> readily accessible to all employees. Toilet facilities so located that employees must use

July 1, 1972. Equipment initiated into service prior to July 1972, may not discharge untreated waste, except where a passenger conveyance operator has filed for and received an extension of time in which to comply. 21 CFR 1250.51(b).

OSHA's general industry standards require that washing facilities "be maintained in a sanitary condition." Lavatories must be provided in all places of employment. However, lavatories need not be present where mobile crews or unattended work sites are involved, so long as employees at these locations have "transportation readily available to nearby washing facilities." 29 CFR 1910.141(d). Each lavatory must have hot and cold, or tepid running water; hand soap or similar cleansing agent; and hand towels or blowers. For purposes of these requirements, lavatory is "a basin or similar vessel used exclusively for washing of the hands, arms, face, and head." 29 CFR 1910.141(a).

OSHA's construction industry standards require employers to provide adequate washing facilities for

> employees engaged in the application of paints, coating, herbicides, or insecticides, or in other operations where contaminants may be harmful to the employees. Such facilities shall be in near proximity to the work site and shall be so equipped as to enable employees to remove such substances.

29 CFR 1926.51(f). Washing facilities must be "maintained in a sanitary condition." Lavatories must be provided at all work sites, except where mobile crews or unattended work sites are involved and employees at these locations have "transportation readily available to nearby washing facilities." Lavatories must have hot and cold, or tepid running water; hand soap or similar cleansing agents; and hand towels or blowers. 29 CFR 1926.51(f).

OSHA's regulations for marine terminals and longshoring activities require employers to provide washing facilities that include, hot, cold, or tepid running water at one accessible location. Where work is being done away from permanent facilities, potable water may provided in lieu of running water. 29 CFR 1917.127(a); 29 CFR 1918.95(a). Also, the facilities must include soap, and hand towels or blowers. The washing facilities must be "regularly cleaned and maintained in good order."

OSHA's washing standards for agricultural operations where 11 or more employees are working on any given day, require one hand washing facility for every 20 employees. 29 CFR 1928.110(c)(2). Hand washing facility means a "basin, container, or outlet with an adequate supply of potable water, soap and single-use towels." 29 CFR 1928.110(b). Washing facilities must be maintained

> in accordance with appropriate public health sanitation practices, including * * * hand washing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition. * * *

29 CFR 1928.110(c)(3).

Generally, the federal OSHA workplace sanitation standards preempt state workplace sanitation standards, except where a state has chosen to operate its own occupational safety and health regulatory program. These programs must be approved by OSHA. [The State-Plan States are Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (covers public employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, Wyoming.] The State-Plan states inspect and enforce their state standards utilizing state personnel. Any fines collected go into the federal general treasury fund, which are usually syphoned back to OSHA and then to the state.

For the most part, the State-Plan states adopt and enforce the federal OSHA general industry (29 CFR part 1910) and construction industry (29 CFR part 1926) standards concerning sanitation facilities in the workplace. However, some of the State-Plan states may adopt a different standard. For instance, California has issued regulations in the State Labor Code, Sanitary Conditions in Factories and Establishments, which provide

> Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. Where there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Cal. Lab. Code section 2350. The State has also issued several sanitation standards for food establishments that include employee facilities. In general, the standards provide that sanitation facilities must be kept separate from food processing and handling, toilet paper must be provided, and the facilities must be "maintained in a clean and sanitary condition." Cal Health & Saf Code section 113335. For milk product plants, California provides that "a suitable toilet, with self-closing door, and lavatory facilities, soap, and clean towels shall be provided for employees." Cal Food & Agr Code section 33777. Also, California adopted a standard for toilets in railroad cabooses:

> It shall be unlawful for any owner or operator of a railroad running through * * * California * * * to operate for or transport the public or its employees in a caboose which is not provided with flush-type toilet facilities, or chemical type toilet facilities. * * *

Cal Pub Util Code section 7614.

Oregon has promulgated sanitation standards that vary slightly from the federal OSHA standards. For instance, Oregon's sanitation requirements for construction projects provide that every construction project estimated to cost $1 million or more must have toilet facilities and facilities for maintaining personal cleanliness for employees. The workplace must include flush toilets, and washing facilities with warm water, wash basins, and soap. ORS section 654.150. Oregon also enforces sanitation standards for agricultural workers, and requires toilet facilities to be "maintained in clean and sanitary condition." In addition, "hand washing facilities must provide clean water, soap or other suitable cleansing agent, paper towels, and a method for disposal of used towels." ORS section 654.174.

Aside from these State-Plan state regulations, a few states that are generally covered by the federal OSHA program have promulgated sanitation standards for employees not covered by the OSHA's standards. Texas issued sanitation standards that apply to employees of city, county, and state offices, who are typically exempted from OSHA's protections. These regulations require that "adequate toilet facilities" and water closets be provided, and that the sewage or treatment system comply with the local health authority requirements. 25 TAC section 295.106(n)(2). For purposes of this requirement, "toilet facility" is a water-flushed fixture maintained in a toilet room for the purpose of defecation, and "water closet" is a toilet facility that is connected to a sewer and flushed with water. 25 TAC section 295.106(d).

The Texas standard also includes ventilation rates that must be met. If there is no applicable local ventilation requirement, the standard imposes a rate measured in cubic feet, per minute, per person. Also, the standard references ventilation recommendations published by the American Society of Heating and Ventilation Engineers and

conditions in a public rest room in an airport or office building. However, sanitation compartments are expected to be clean and tidy following periodic servicing and cleaning. However, since the duty to remedy an unsanitary condition arises only at the daily inspection, it is particularly appropriate to specify a standard that describes conditions most people would find unacceptable. The definitions of sanitary and unsanitary that appear in the proposed rule text reflect consideration of this issue of accumulation by including the phrase "any significant amount of filth, trash, or human waste."

The Working Group further discussed another important issue raised by the railroads' suggested language: what perception must the reasonable person have before a condition is unacceptable? What amount of filth, trash, or human waste is considered significant by the reasonable person? FRA's approach to the subject is governed by the need to encourage use of sanitary facilities on a regular basis as a matter of good health. Even if a condition is objectively harmless (as determined by later laboratory analysis), the fact that it gives the appearance of possible unhealthfulness could discourage use of the facility and contribute to degraded health.

The railroads' suggested language tries to address the topic of to what extent the railroad is responsible for conditions there were left behind by careless employees or trespassers. To limit the disruption of service because of conditions over which the carrier has limited control, the carriers suggested that certain conditions be treated as unsanitary only if "caused by mechanical or maintenance failure in the compartment." This language may present enforcement difficulties for FRA in determining whether a mechanical or maintenance failure has occurred. This raises issues that could legitimately bear on the exercise of FRA enforcement discretion, yet FRA believes such issues shouldn't serve as a defense to failure to address unsanitary conditions at the daily inspection. No railroad employee should have to contend with unsanitary conditions left behind by a trespasser or prior employee user of the facility.

With the exception of branch lines discussed elsewhere in the preamble, as of the daily inspection, railroads should be prepared to clean a sanitation compartment and service a toilet facility or to place the unit in a trailing position if the sanitation compartment is no longer sanitary or operative.

FRA invites comment on these proposed definitions from all interested parties. This is a very difficult area, and one in which other regulatory bodies have opted to leave these terms undefined. Nonetheless, FRA would like to arrive at suitable definitions for these subjective terms that are consistent with the spirit of the Working Group discussions, and that provide adequate notice to the industry as to what constitutes compliance.

FRA proposes to define sanitation compartment as an enclosed compartment on a locomotive that contains a toilet for employee use. Depending on the type of locomotive, these compartments may be located in the nose of the unit or behind the engineer's seat. Further discussions below explain in detail what each sanitation compartment must contain.

FRA proposes to define toilet facility as a system that automatically or on command of the user removes waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors. FRA developed this proposed definition with the assistance of the Working Group. There are a variety of toilets available on the market for use on board locomotives, and FRA did not wish to exclude the use of any of the systems that effectively meet human sanitation needs. Therefore, this definition attempts to establish performance criteria that all of the adequate facilities meet when operating as intended.

To clarify FRA's intent concerning some of the language proposed with respect to toilet facility, "automatically * * * removing the waste" does not mean that waste is removed by gravity. Rather, this language is intended to cover systems that possess sensors which flush waste once the occupant leaves the toilet area. It is FRA's understanding that some toilets that may be used on locomotives utilize this feature, and FRA believes it is an effective tool. However, FRA does not intend that systems, without a device to separate the waste tank from the user (such as a deflector), which simply permit waste to flow to holding tanks below the toilet bowl and remain there until emptied, meet this proposed definition. These systems are prone to overfilling and noxious odors, and may go uncleaned for some time because the cleaning or emptying process is very unpleasant and hence doesn't get accomplished. The term "on command of the user" means that a flush mechanism is present and functions as intended.

The definition for toilet facility also includes the terms "harmful" and "offensive," which may give rise to differing subjective interpretations. FRA and the Working Group discussed these words and ultimately determined that a certain amount of subjectivity is inevitable when personal preferences for cleanliness are involved. Individuals may differ as to what seems "offensive" or even "harmful." FRA intends that the toilet system must effectively remove or treat the waste so that odors generated in the toilet area do not linger and penetrate the cab working environment. FRA will use its reasonable judgment in determining whether odors rise to the level of offensiveness or harmfulness.

FRA proposes to define washing system as a system for use by employees to maintain personal cleanliness. As defined here, the facility may include a secured sink, water, antibacterial soap and paper towels; or antibacterial waterless soap; or antibacterial moist towelettes and paper towels; or any combination of antibacterial cleansing agents. It is critical that all employees have available to them a system in which they are able to clean and sanitize their hands after using the toilet. FRA wishes to be as flexible as possible in prescribing washing systems for locomotive cabs. There are a variety of antibacterial agents available on the market that effectively sanitize and disinfect after toilet use. In addition, there are many locomotive units that do not possess sinks and running water for employees to use as washing facilities. As a result of discussions with the Working Group, it is FRA's understanding that most cab crews receive a package of items for use on each trip, and this "crew pack" typically includes the sort of washing system that is permitted by this definition. Therefore, so long as employees are provided with one of the options included in the definition, or others that may be developed in the future that provide an equivalent level of sanitation, this portion of the sanitation requirement has been met.

Members of the Working Group expressed concern about restrictions on the placement of "crew packs." Some items in these packages are used by employees while in the sanitation compartment, but these packages also include items that employees use while working or eating in the cab, such as paper towels. In addition, crew packs are available for pick up by locomotive crews at on-duty points throughout the railroad network, and employees often grab several of them to keep in the cab. It is likely that some of these packs won't be placed in the sanitation

more than one floor-to-floor flight of stairs to or from them are not considered as readily accessible. As far as is practicable, toilet facilities should be located within two hundred feet of all locations at which workers are regularly employed.

N.D. Admin. Code 33–03–20–06.

Section-by-Section Analysis

It is important to note that FRA's proposed rule text set forth below differs in some respects from the other federal and state standards because of the unique characteristics of the railroad operating environment. The working environment for railroad cab employees is quite different than the typical American worker. Existing locomotive toilet systems and corresponding maintenance needs are not uniform throughout the industry. Employees may work on a different locomotive and a variety of routes each day of the week. Employee assignments and actual time spent in the cab may vary significantly during a typical week, and toilet systems might vary significantly on each of these occasions. The time it takes to complete a particular route might vary greatly from day-to-day, due to traffic, load, and weather conditions. Small operators typically possess older equipment, and some units may not be equipped with toilet facilities at all. On these properties, employees may generally have access to adequate sanitation facilities along the right-of-way, but there may be occasions when that is difficult to achieve.

There are significant economic and operational barriers to requiring a "one-size-fits-all" sanitation standard, given all of these factors, and consequently FRA has made every effort in this proposal to be flexible. The basic requirement set forth in the proposal is that each cab employee should have access to clean, operable toilet facilities, as the need arises for each individual. There may be instances where that basic principle is frustrated, but FRA believes the proposal minimizes that likelihood to the fullest extent possible.

Definitions

The NPRM begins with proposed definitions for key terms used, which would be placed in section 229.5 with the other definitions established for part 229. The definitions are set forth alphabetically. For the terms commuter service, switching service, and transfer train service, please see the detailed discussion of the exceptions to the general requirements, discussed in conjunction with section 229.137(b) below. The proposed definition of the term modesty lock relates to a rudimentary lock that would be required on the door of the sanitation compartment. As proposed, the modesty lock is a lock or latch that is operated by the occupant of the sanitation compartment to provide privacy while in use. It is not required that a modesty lock be designed to prevent deliberate forced entry. For example, some locks could be designed to provide emergency access, to accommodate carrier concerns that access may be required in the event of an accident or health problem. Such access could be gained, for example, by using a coin to turn a slotted pin or using a pencil inserted into a hole to slide a latch. Such simple measures would prevent inadvertent intrusion, thereby maintaining privacy while allowing prompt emergency access. Most locomotives are now equipped with a modesty lock that would meet the proposed definition, and these existing locks vary from property to property. In addition, there are a variety of products available on the market that would meet the requirements of this proposed definition, which vary in price, sophistication, and size. For example, a very simple surface-applied slide latch may be employed to meet the requirements of the proposed definition. At this time, FRA sees no need to prescribe more specific requirements for the modesty lock, so that each railroad carrier may choose the best device among the variety of products available to suit their equipment and cost needs, and so that existing locks which serve the intended purpose of privacy may remain in place.

The proposed definition for potable water references the requirements of the U.S. Environmental Protection Agency drinking water standards, which are recognized as the pertinent reference standard. This proposed definition also states that commercially available bottled water is deemed to be potable water for purposes of the sanitation standards. So long as employees have potable water available in adequate supply for drinking and washing purposes, that is bottled and a recognized commercial product, the running water that might be present in the sanitation facility on some locomotives would not have to strictly meet the EPA drinking water guidelines. On many older locomotives in use, tanks of water are present, and may have been used at one time for drinking and washing purposes. Nothing in this proposal would require the removal of these water tanks. However, with the advent of bottled water, and the knowledge that it is sometimes difficult to maintain "potable" water in the large, on-board tanks, carriers typically now provide packs of bottled water to cab employees. Also, on many of the newer locomotives, there is no large water holding tank for employee use, and carriers with these units also utilize the convenience and safety aspects of commercially available bottled water. FRA sees no adverse consequences associated with this usage, and believes it may decrease the risk of illness to cab employees.

The NPRM proposes definitions for the terms sanitary and unsanitary, respectively, which involve the absence or presence of filth, trash, and waste that would cause a reasonable person to believe that the condition might constitute a health hazard; and persistent odor sufficient to deter normal use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes. FRA believes that providing these definitions would add clarity to this issue and would ultimately help the industry to comply with the proposed standard. These terms when used in ordinary discussion are somewhat subjective, and might produce different inferences among different people. Therefore, FRA's proposed definition incorporates the perceptions of a reasonable person, or the average reaction to sanitation facilities, and includes specific examples that would constitute unsanitary conditions. Sanitary conditions are thus defined as the absence of those conditions. The list provided in the proposal is illustrative, not exhaustive, and should serve as guidance to the industry of what FRA would consider noncompliant. Undoubtedly, FRA inspectors and the industry will have to utilize on-the-spot judgments in order to distinguish conditions that are acceptable from those that are not. These proposed definitions are inserted to guide those local decisions in an area that can be very subjective. FRA invites comment on these definitions, including additional or alternate language that may enhance the clarity of the terms.

In discussions subsequent to the last Working Group meeting, some of the railroad representatives expressed frustration at the subjective nature of defining terms like "sanitary" and "unsanitary" and proposed an alternate definition for the term "sanitary."

The railroad's suggested language suggests that only an "accumulation" of filth, trash, or human waste is unacceptable whereas visible dirt would not constitute an unsanitary condition. On this point, the RSAC parties generally accept that immaculate conditions cannot be expected, any more than one would expect such

operative, or other, effective alternative provisions for ventilation of the sanitation compartment must be made.

If the ventilation system for the sanitation compartment is defective as of the daily inspection, the railroad carrier may not use the unit in the lead position, unless repaired. If not repaired, the railroad carrier may use the locomotive in trailing position, in switching service consistent with the requirements of section 137, paragraph (b)(1)(ii), or in transfer train service consistent with the requirements of section 137, paragraph (b)(1)(iii). The rationale for permitting this usage when the ventilation system is inoperative, is that trailing units are typically unoccupied, and so no harm would come from utilizing the locomotive in that position, and the exceptions set forth in section 139(b)(1)(ii) and (iii) require the carriers to provide access to adequate facilities elsewhere.

It is important to note that a clean, operable toilet facility will prevent harmful gases or persistent, offensive odors from developing in the first place, and so the most productive way to eliminate the risk of noxious air in the cab is to focus attention on maintaining the toilet facility properly. It is also important to note that if the toilet room door is designed to be equipped with seals, when the seals are maintained and replaced as needed, odors are less likely to migrate to the interior of the cab. If applicable, replacing faulty sanitation compartment door seals would be advisable to further protect the cab occupants from offensive odors, although this proposal does not require such replacement.

In section 137(a)(2), FRA proposes that the sanitation compartment must possess a door that closes, and the door must be equipped with a modesty lock. A door which closes is one that, by design or device, stays shut when the user closes it. For instance, a typical interior, residential door with a door knob is a door that closes. Also, a door that possesses a spring device that pulls the door closed after opening constitutes a door that closes. Similarly, doors used to enclose bathrooms on airplanes close when pulled shut, by way of a device similar to a door knob, and would meet the proposed standard set forth here. (These doors also possess modesty locks to prevent unwanted intrusion). FRA does not mandate the type of closing door the locomotive must possess, so long as the door closes by design or on command of the user. This proposed requirement is necessary to provide basic privacy to employees using the sanitation facilities. A modesty lock is a device operated by the occupant from inside the toilet compartment that prevents entry by a person who is not aware that the compartment is occupied. A modesty lock can typically be disabled from the outside in the event of an emergency that requires entry from outside the toilet compartment. FRA believes employees should have the expectation of privacy when using toilet facilities, consistent with similar standards issued by other regulatory bodies and common sense. A door that closes and that possesses a modesty lock provides that privacy.

The railroad carriers on the Working Group expressed some concerns about a modesty lock that would prevent entry in the event of an emergency, such as an accident or health problem. As defined in this proposal, the railroads may utilize modesty locks that can be disabled in an emergency, so long as the lock prevents an accidental or unnecessary intrusion. FRA does not prescribe specific requirements concerning the form of the modesty lock in this NPRM. Some of the railroad carriers utilize fairly sophisticated, expensive devices, and some utilize an inexpensive, rudimentary slide device. These achieve the desired level of privacy, and also provide the employer with the ability to enter the compartment in the event of an emergency. Either would meet the requirement proposed in this paragraph. As FRA understands it, most locomotives are currently equipped with closing doors that have modesty locks, and if not, the costs associated with adding modesty locks to unequipped units are minimal. In the Working Group discussions, the industry representatives indicated that all units could be equipped with modesty locks by [18 months after publication of the final rule].

As currently drafted, this proposal would require all sanitation compartments to be equipped with a closing door as of the daily inspection. However, if the modesty lock is defective as of the daily inspection, the railroad carrier would not be required to remove a locomotive from service. The carrier would be required to repair the modesty lock on or before the next 92-day inspection required by part 229.

The requirements proposed in § 229.137(a)(3)–(a)(4) require toilets and washing systems in lead locomotives in use. FRA understands that there are many varieties of toilet facilities that function effectively on board locomotives, and there are likely to be technological improvements that will bring about new units in the future. The proposal takes a performance approach to toilet and washing systems, rather than specifying units by name in the definition, so that effective existing systems and systems not yet developed, would not be unintentionally excluded.

As discussed above, FRA does not wish to prescribe a particular type of washing system. However, each lead locomotive must have one of the systems outlined in the proposed definition available for employee use. As currently proposed, this paragraph states that the washing system must be located in the sanitation compartment, unless it is otherwise provided to employees when they report for duty, enter the cab for duty, or where the locomotive possesses a stationary sink that is not located in the sanitation compartment. Based on discussions with the Working Group, FRA understands that on some locomotives washing systems are located in the toilet compartment, but in many cases they are provided to employees in crew packs. Many railroads give crew packs to employees as they begin each work shift, and they typically contain antibacterial soap, paper towels or moist towelettes, toilet paper, and perhaps bottled water. As stated above, FRA sees no need to require the railroad carrier to maintain washing products in the sanitation compartment, so long as employees receive them in crew packs at the beginning of their shift. The crew packs will be made available to crews at their reporting point or onboard the locomotive. The employer must provide these items to employees in order to meet the proposed standard.

This paragraph also permits sinks located adjacent to the sanitation compartment to remain outside the sanitation compartment. According to information received from the Working Group, at least one Class I railroad carrier maintains locomotives with stationary sinks that are not in, or capable of being placed in, the sanitation compartment. FRA sees no safety or health risk associated with this configuration and, therefore, the proposed standard would not prohibit this.

Section 229.137(a)(5) proposes that the sanitation compartment contain toilet paper in sufficient quantity to meet employee needs, unless the railroad carrier otherwise provides employees with toilet paper when they report for duty or occupy the cab for duty. FRA chose not to prescribe a specific amount of toilet paper for each employee in the cab, believing that this issue is best handled through common sense decision making at the local level. As FRA understands it, some railroad carriers maintain toilet paper in the sanitation compartment, and some rely

compartment when brought on board, and will be placed, as a convenience, near the employee cab stand for use throughout the work shift. For these reasons, FRA sees no reason to require by regulation that crew packs remain at all times in the sanitation compartment and so, this proposal would not place restrictions on the placement or contents of crew packs issued by the railroad carrier.

FRA will revisit these definitions to determine if they may be streamlined without losing clarity, and whether we should provide additional definitions for terms used in the rule text. For instance, a definition of "defective" might be helpful to understanding the application of this rule. FRA invites comment from the industry about all of the definitions proposed here and any other terms that should be defined.

Amendment to Section 229.9, Movement of Non-Complying Locomotives

FRA proposes to add paragraph (g) to section 229.9, which prescribes requirements for the movement of non-complying locomotives. The purpose of this addition is to clarify that the provisions set forth in proposed sections 229.137 and 229.139 establish criteria for the movement or handling of locomotives that are discovered to have defective or unsanitary sanitation compartments at the time of the daily inspection. These new, proposed criteria for units with defective sanitation compartments would supercede those set forth in paragraphs (a)–(c) of section 229.9, which require moving designated locomotives as lite or dead, under certain circumstances, and sometimes require en route failures to be addressed at the nearest forward point where the necessary repairs can be accomplished. These new, proposed criteria for units with defective sanitation compartments would also supercede the language in section 229.21(a) and (b), that requires defective items to be repaired prior to departure. As FRA and the Working Group examined the issue of sanitation on locomotives, it was determined that alternative requirements would be more appropriate for the handling of locomotives that are otherwise fit for service, but possess a defective toilet or ventilation system in the sanitation compartment. The power available in these units can be utilized in the train consist, without introducing safety hazards associated with the equipment and train movement. The hazards employees face in the presence of defective or unsanitary facilities are addressed by the requirements set forth in the new proposed sections 229.137 and 229.139. However, FRA invites comment on this and all other provisions set forth in the NPRM.

Amendment to Section 229.21, Daily Inspection

FRA proposes to revise section 229.21 to be consistent with the new proposed requirements in sections 137 and 139. As currently written, section 229.21 requires railroad carriers to repair all items noted on the daily inspection report prior to using the locomotive. However, the new sections 137 and 139 would permit locomotive units with certain non-complying conditions to remain in service beyond the date on which the daily inspection occurs. For instance, carriers may utilize a locomotive with a defective toilet facility in switching service for a period of up to 10 days, at which time the unit must be repaired or used in the trailing position. Also, the railroad may continue to use a locomotive that possesses a defective modesty lock until the next 92-day inspection, at which time the modesty lock must be repaired. The fourth sentence of paragraphs (a) and (b) have been revised to note this change as a result of the new proposed requirements in sections 137 and 139. In addition, the fifth sentence of paragraphs (a) and (b) has been modified to note that the railroads may choose to record repairs of conditions that don't comply with sections 229.137 and 229.139 electronically, rather than on the daily inspection report. Some of the carriers have stated that they have electronic repair reporting systems in place that work more efficiently than paper records. FRA sees no reason to thwart these ongoing programs, so long as they are capable of being audited and effectively track repairs.

Section 229.137(a) Sanitation, General Requirements

This portion of the proposed sanitation standard sets forth the primary requirements for equipping lead locomotives in use with sanitation facilities. FRA's primary concern is providing locomotive crews in the lead units with access to private toilet and washing facilities, that are equipped with adequate ventilation, toilet paper, and trash containers. Paragraph (a)(1) proposes that each lead locomotive in use must contain a sanitation compartment, except as indicated in paragraph (b) where proposed exceptions to this requirement are set forth, or where a unit is designed such that no sanitation compartment exists. For instance, certain locomotive units used by Amtrak have toilet facilities located in the engine room, which is enclosed by a door and otherwise meet the requirements of this paragraph. For purposes of this standard, FRA proposes that the engine room on those Amtrak units constitutes the sanitation compartment for those units.

The sanitation compartment must be adequately ventilated; equipped with a door that closes and possesses a modesty lock; equipped with a toilet facility that meets the requirements of the definition described above; equipped with a washing system that meets the requirements of the definition described above, unless the railroad otherwise provides the washing products to employees when they report for duty or occupy the cab for duty (typically in crew packs), or where the locomotive possesses a stationary sink that is located outside the sanitation compartment; equipped with sufficient toilet paper to meet employee needs, unless the railroad carrier otherwise provides toilet paper to employees when they report for duty or occupy the cab for duty (typically in crew packs); and equipped with a trash receptacle, unless the railroad carrier otherwise provides portable trash receptacles for use in the sanitation compartment to employees upon reporting for duty or occupying the cab for duty (typically in crew packs).

With respect to ventilation in the sanitation compartment, the Working Group and FRA determined that, on much of the existing equipment, a simple vent in the sanitation compartment that opens to facilitate the exchange of fresh air with air in the toilet area sufficiently addresses ventilation. According to discussions with the Working Group, which consists of parties who use and maintain locomotives, these vents adequately diffuse offensive odors, so long as the toilet is sanitary and operating. This vent must be capable of opening or closing on command or control of the user in order to meet the requirement of "adequately ventilated." Other ventilation systems in place on older locomotive equipment must operate as intended, evacuating the air in the sanitation compartment, in order to meet the proposed standard.

The ventilation systems on new locomotive equipment is more complex. The cab's air flow is controlled and pressurized to maximize air flow and equipment performance, and minimize noise levels in the cab. In order to meet the proposed requirement concerning ventilation for these newer units, that portion of the ventilation system required to provide air movement in the sanitation compartment must be

equipped with a toilet on the effective date of the final standards. This is discussed in greater detail below.)

Paragraph (b)(1)(iii) relates to transfer trains, and tracks the same logic as the exceptions proposed for commuter operations and switching service. Transfer trains are trains that travel between a point of origin and a point of final destination not exceeding twenty miles and do not perform switching service. *See*, 49 CFR 232.13(e)(1) (Specifying the air brake test required for transfer trains.) Because the cab employees engaged in transfer train service generally have the opportunity to use railroad carrier-provided sanitation facilities, as needed during the course of their work shift, FRA proposes that the existing locomotives used in transfer service need not possess a sanitation compartment. These employees are less likely to face long periods of time in the locomotive without access to sanitation facilities in rail yard buildings or at railroad carrier-owned facilities along the right-of-way. If the railroad carrier is unable to provide such facilities to accommodate employee needs, then the carrier must utilize locomotives that possess toilet facilities that otherwise meet the requirements of this proposal. (It is important to note that this NPRM would prohibit the removal of toilet facilities from locomotives engaged in transfer service, where those locomotives are equipped with a toilet on the effective date of the final standards. Also, all locomotives manufactured after the effective date of the final rule in this matter must be equipped with a toilet facility accessible without going outside the locomotive. These requirements are discussed in greater detail below.)

Paragraph (b)(1)(iv) proposes to exempt locomotives of Class III railroad carriers that are not equipped with toilet facilities, and that are not engaged in switching or transfer train service, from the requirement of having a toilet facility in the cab. However, as is stated in the proposed exception, these Class III railroad carriers must provide or arrange for sanitation facilities along the right-of-way. (It is important to note that the NPRM would prohibit the removal of toilet facilities from locomotives, if those locomotives are equipped with a toilet on the effective date of the final standards. This is discussed in detail below.)

Class III railroad carriers are small businesses with limited capital margins. (The current definition of these entities, as established by the Surface Transportation Board, is a railroad carrier that earns $20 million or less in annual operating revenues.) Typically, purchasing new locomotives would be out of the question for these companies, and spending considerable funds to retrofit old units could mean that critical safety programs in other disciplines would suffer. The older locomotive equipment generally cascades down to the Class III railroad carriers, and over time the Class III railroad carriers will acquire toilet-equipped locomotives. Currently, many of the older locomotive units are not equipped with toilet facilities, and some of the units actually lack space for toilet facilities, depending on the purpose it was originally intended to serve. FRA believes that it would create great financial hardship for these entities to require sanitation retrofits or new locomotive purchases. Some of the small operators might simply opt out of the market, and for others, the diversion of funds could create safety problems elsewhere. Therefore, FRA proposes this exception to ensure that the proposed sanitation standards do not give rise to additional safety concerns or destroy otherwise productive business concerns. However, the Class III railroad carriers that choose to avail themselves of this exception must provide or arrange for adequate sanitation facilities, which means they must be available to employees readily, frequently, and as needed along the right-of-way.

This proposed exception would not permit a Class III railroad carrier to advise employees to use sanitation facilities at restaurants and other public establishments that have no business connection to the carrier. These Class III employers may not assume that employees will locate sufficient sanitation facilities on their own. The Class III railroad carrier must take affirmative action to see that the cab employees have frequent access as needed to adequate sanitary facilities. If it is not possible for the railroad carrier to provide adequate sanitary facilities along the right-of-way, then it is expected that the carrier will consult with customers or other businesses along the route for the specific purpose of garnering access to adequate sanitation facilities for employees who must work in cabs without sanitation compartments. In addition, the Class III railroad carrier must communicate to employees the locations and, as appropriate, hours of availability of access to the sanitation facilities provided by the carrier via customers or other businesses along the route. FRA and the Working Group expect that the Class III carrier will consider 24-hour railroad operations in these determinations, and which facilities will be available during every work shift.

Paragraph (b)(1)(v) proposes that the locomotives of scenic, tourist, historic, or excursion railroads, which are not steam-powered, which operate on the general system, and are otherwise covered by the locomotive safety standards set forth in 49 CFR part 229 would not be required to be equipped with compliant toilet facilities, so long as employees working in these locomotives have access to appropriate facilities at frequent intervals during their work shift. The rationale for this proposal is similar to the proposed exceptions for Class III entities. The railroads addressed by this paragraph, for the most part, have limited profit margins and utilize older equipment that may not possess sanitation facilities on board. The costs to retrofit these units would adversely impact the viability of these operations, and on some of the present equipment, may not be possible. FRA believes that so long as the employees who work on these units are provided appropriate facilities throughout the course of the work shift, there would be no reason to require these locomotives to be equipped with sanitation facilities. FRA invites comment on this, and all other proposals set forth in the NPRM, particularly with respect to long-distance excursion operations that typically employ locomotives already equipped with toilet facilities. Finally, it's important to note that representatives of tourist and excursion railroads have suggested that FRA modify the language in this paragraph to clarify that the tourist operator is responsible for providing access to adequate toilet facilities rather than the railroad owner of the track on which the tourist organization travels. FRA believes that this would be advisable in the final rule, and invites comment on it now.

It is difficult to define with specificity the terms "ready access" and "frequent intervals," which are used in paragraphs (b)(1)(i)–(b)(1)(v) of this section of the NPRM. FRA and the Working Group spent a great deal of time discussing the terms and the concepts they infer. All struggled with appropriate language that would capture the concepts accurately and still provide sufficient flexibility to accommodate the changeable nature of railroad operations. The Working Group discussed establishing specific time periods or distances traveled that might equate to a satisfactory and concise definition of these terms. However, members of the Working Group recognized that individuals' access needs vary greatly from person-to-

on crew packs for dissemination of toilet paper. FRA believes either method is adequate, so long as reasonable amounts of toilet paper are provided to meet typical daily needs. If it is determined during the daily inspection that a locomotive is not equipped with sufficient toilet paper, the unit must be equipped prior to departure. For most railroads, this requirement would be accomplished by the use of crew packs, which contain ample toilet paper for each employee's work shift.

Section 229.137(a)(6) proposes to require that each sanitation compartment contain a trash receptacle, unless the railroad carrier provides portable trash receptacles in the employee crew packs. This proposed requirement attempts to provide flexibility to the railroad carrier where space limitations in locomotive sanitation compartments prevent the application of an across-the-board requirement for permanent trash cans or similar fixtures in all sanitation compartments. Therefore, as drafted here, the trash receptacle may be a permanent trash can or similar fixture located in the sanitation compartment, or the trash receptacle may be a small plastic bag that hangs from the door handle or is posted to an interior wall. In addition, where the space limitations in the sanitation compartment prohibit placing any sort of trash receptacle in the sanitation compartment, portable trash bags that can be included in the employee crew packs may be placed outside the sanitation compartment. In these instances, the Working Group and FRA expect that the trash bags will be placed at a location that is as far from the cab stand as possible, such as in the nose of the cab. FRA and members of the Working Group wish to segregate sanitation-related trash from the area where employees work and often eat during the course of the work shift. In large measure, where a trash receptacle cannot be placed in the sanitation compartment, the location of the portable trash bags will be controlled by the employees working in the cab, who have a natural interest in keeping the sanitation-related trash away from the work and eating areas of the cab.

As currently drafted, if it is determined during the daily inspection that the sanitation compartment is not equipped with a trash receptacle, or the crew has not been provided one in a crew pack, the railroad carrier must equip the locomotive with a trash receptacle prior to departure. This may be accomplished by placing a trash receptacle in the sanitation compartment, or by providing portable trash receptacles to employees in their crew packs when they report for duty or occupy the cab for duty.

Section 229.137(b) Exceptions

Paragraph (b) of section 229.137 sets forth exceptions to the general requirements proposed in paragraph (a), discussed above. Paragraph (b)(1)(i)–(v), set forth exceptions to the general requirement of a sanitation compartment in each lead locomotive in use. These exceptions are proposed in order to accommodate certain unique circumstances.

Paragraph (b)(1)(i) would exempt locomotives used in commuter operations where employees have access to sanitation facilities at frequent intervals, either at stations or elsewhere on the train. For purposes of this proposal, commuter service means commuter or short-haul railroad passenger service in a metropolitan or suburban area, and commuter service that was operated by the Consolidated Rail Corporation on January 1, 1979, that runs on rails or electromagnetic guideways, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation. (*See*, 49 CFR part 209, Appendix A) This definition is consistent with the types of railroads that Congress intended to be subject to FRA's jurisdiction under the Safety Act; see 49 U.S.C. 20102(1). Most commuter runs are relatively short in duration, providing multiple times during the day's work shift when facilities can be used at downtown or outlying terminals. Typically, cab crews on commuter operations may use sanitation facilities in the stations they service in the course of their route, or in the passenger cars they are hauling. Therefore, FRA sees no need to require the locomotive cabs on commuter operations to also possess a sanitation facility. In most cases, the configuration of commuter locomotives differs from traditional freight locomotives. Most do not currently possess sanitation compartments and there may be no additional space to add such a compartment.

This exception makes clear that the sanitation facilities employees use must be provided by the commuter railroad carrier. In other words, the employer may not utilize this exception to the general requirement if employees are forced to use sanitation facilities in businesses along the right-of-way that have no connection to the employer, such as restaurants, manufacturing plants, or convenience stores. FRA believes that each commuter railroad operation subject to these standards is responsible for providing sanitation facilities, and employees must not be placed in situations where they are forced to request permission to use the sanitation facilities of foreign establishments during the workday. So long as these conditions are met, and because the nature of commuter operations affords employees the opportunity for frequent access throughout the shift, FRA sees no reason to impose a new, costly requirement for cab toilets on commuter railroad locomotives.

Paragraph (b)(1)(ii) would permit all locomotives engaged in switching service, where employees have access to railroad carrier-provided sanitation facilities outside of the cab, to operate without a sanitation compartment in the cab. For purposes of this paragraph, switching service is defined as the classification of freight cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement. This definition has developed over time in the railroad industry, and as used here, is consistent with customary usage.

This exception is similar to and based on the same general principle as the exception proposed for commuter service. Employees engaged in switching service are typically in the cab for relatively short periods of time, and have access to sanitation facilities in rail yard buildings or at railroad carrier facilities along the right-of-way as needed. Generally, these employees are not captive in a locomotive cab for interminable time periods, where a sanitation facility clearly must be provided. Therefore, FRA proposes that locomotives involved in switching service need not possess a toilet in the cab, so long as employees have ready access to railroad carrier-provided sanitation facilities along the right-of-way or in yard facilities at frequent intervals during the work shift. If a railroad carrier is unable to conform with this concept, this proposed exception could not apply. If the switching routes place cab employees at remote locations where railroad carrier sanitation facilities are not accessible to employees, then the carrier must provide a locomotive that is equipped with all of the items required by paragraph (a) of this section, which is discussed below. (It is important to note that this NPRM would prohibit the removal of toilet facilities from locomotives engaged in switching service, where those locomotives are

employees to the carrier for disposal. Although the carrier believes that this system adequately addresses sanitation needs for cab employees, concerns about the system have been raised by employees, landowners along the right-of-way, and certain State agencies. Further, as the carrier recognizes, proper administration of this system off the carrier's home lines sometimes is not practicable, and "power sharing" arrangements in the railroad industry are growing. FRA agrees that this system should be retired, but also recognizes the significant capital and labor costs associated with a massive retrofit campaign. The carrier has initiated a replacement program in which approximately 30 locomotives per month are being retrofitted with new toilet facilities that would satisfy this proposed rule. In addition, this carrier has decided not to deliver locomotives with the older toilet facilities in the lead position to other carriers in interchange, and this proposal would incorporate that restriction for the period of retrofit. Finally, this carrier has stated its intention to make every reasonable effort to place compliant locomotives in the lead position on its system wherever possible. This sort of consist management commitment is sometimes difficult to achieve, given the competing priorities that other safety requirements and safety risks present. However, FRA and the Working Group are satisfied at this point in time that the retrofit program and the carrier's commitment to place locomotives with compliant toilets in the lead where possible, is the best solution to the problem presented. Based on the number of units in need of retrofit, FRA and the Working Group estimate that all of the carrier's locomotives are capable of being in compliance with the proposed sanitation standards by July 1, 2003. Therefore, based on all information currently available, FRA proposes to permit the Class I railroad carrier to operate locomotives in the lead position on its lines with non-compliant units until July 1, 2003. After that date, all lead units would be required to possess compliant toilet facilities. Finally, it is important to note that this carrier objects to and disagrees with any inference or statement that the current systems in place are inadequate or are not properly maintained.

As written, this exception would apply only to the Class I railroad carrier that FRA knows possesses these toilet systems. FRA is unaware of any other railroad carriers that utilize this toilet. However, FRA requests comments from the industry as to whether this system exists on other properties, and if so, what plans those employers may have for retiring or replacing the toilets. If the system is more prevalent than FRA now believes it is, final rule text language may need to be altered to accommodate the use of the systems on those properties. In making this determination, FRA would consider a variety of factors, including the number of toilets involved, the operational characteristics of the railroad operations in which the toilets are used, the programs the railroad carrier has in place to retire or retrofit the toilets, the economic status of the railroad carrier involved, and the effectiveness of the existing maintenance and servicing program for the toilet. As is stated above, FRA wishes to restrict and eventually eliminate the use of toilets that do not meet the definition of toilet facility proposed in this NPRM. However, FRA understands that certain accommodations may be necessary in the short term in order to achieve that goal.

With respect to paragraphs (b)(2)(i) and (b)(2)(ii), it is important to clarify that the proposed exceptions relate only to the type of toilet facility in use. The other proposed requirements set forth in this NPRM would apply to these railroads and their equipment according to their terms. For instance, the requirements set forth in paragraphs (a)(1)–(2), and (a)(4)–(6) would apply to these locomotive units. Similarly, section 229.139, which relates to servicing and operative equipment, would require the units covered by paragraphs (b)(2)(i) and (b)(2)(ii) to operate as intended and be located in sanitation compartments that are ventilated and free of debris and waste.

Paragraph (c) of section 137 would prohibit a railroad carrier from placing a locomotive with an unsanitary or defective toilet facility in the lead position. This determination would be made as of the time of the daily inspection required by 49 CFR § 229.21. En route failures that occur after the daily inspection would impose no burden on the railroad carrier, until the next daily inspection is due. However, according to Working Group members, the current railroad practice with respect to en route toilet failures involves moving defective toilet units into a trailing position, where it is possible to do so. Although the NPRM does not require such movement, the enhanced focus on sanitation facilities that will naturally occur as a result of this standard should increase the likelihood that the practice will proliferate. In addition, Working Group members stated that currently, employees may require changes in train consist where imminent safety hazards are present. Nothing in this proposal would alter that process.

The requirement set forth in paragraph (c) reflects the fundamental need to provide employees with a clean, safe workplace. It is inconsistent with notions of decency and the minimum requirements for workplaces in other industries to expect employees to work effectively and safely if unsanitary waste or deplorable odors are present. The Working Group agrees with this principle and believes that the proposed standard in the NPRM is appropriate for the railroad industry.

In order for a locomotive to be placed or remain in the lead position as of the daily inspection, all aspects of the toilet facility must be operating as intended and it must be clean. The chemicals required by certain systems must be supplied in the appropriate amount so that the toilet will operate as intended; if the system calls for antifreeze, it must be present during winter months to prevent freezing; any integral flush mechanisms or sensors must operate as intended; and all components of the system intended to be present must be present.

As discussed above, FRA has proposed definitions for the terms 'unsanitary' and 'sanitary' to assist the industry and FRA inspectors to determine conditions that are noncompliant. FRA believes that most individuals have a general sense of conditions that would constitute unsanitary facilities, and FRA inspectors would utilize that sensible approach to enforcing this standard, but the definition should provide additional clarity to that process. As for mandating specific servicing requirements, FRA and the Working Group currently believe that the railroad carriers, in consultation with their labor forces, are in the best position to determine when toilet facilities must be emptied and cleaned. These decisions are based on a variety of factors, including degree of use, length of trip, weather conditions, size of crew, and the specifications of the system in place. However, FRA may consider adopting more specific requirements for servicing the toilets, due to concerns that have been raised by railroad employees, and this issue is discussed in greater detail below.

In discussions with members of the Working Group subsequent to the last Working Group meeting, some of the carriers raised concerns about the difficulties of providing a substitute locomotive that possesses a sanitary, operable toilet facility on branch lines in remote locations. The carriers stated

person and from day-to-day. Further, the Working Group noted that it may take 5 hours to traverse 5 miles on a given day, depending on traffic, weather, load, and other considerations. Therefore, the Working Group rejected the notion of a hard and fast time or mileage limit as an appropriate solution to this question.

Instead, the Working Group offered an explanation of the concept of adequate access to sanitation facilities, where locomotives covered by these exceptions are not equipped with a toilet facility: The crew members would have immediate accommodations made by the local railroad carrier officials on reasonable demand or need by a crew member to provide access to a railroad carrier's sanitation facilities at frequent intervals during the course of their work shift. As used here, the term "immediate accommodations" means that the employer would begin the process of providing access to sanitation facilities when the employee requests it.

The general principle that FRA and the Working Group intend to capture with these terms is that employees would have access to sanitation facilities, as the need arises, that are located in close proximity to the work site, and that are owned or operated by the railroad carrier. In many circumstances, these terms simply mean an employee could disembark from a locomotive in a yard, use a toilet in a nearby building, and then return to the locomotive cab. However, if employees work in remote locations where sanitation facilities do not exist, the railroad carrier would be required to provide employees with alternate transportation to a nearby site, in order to make use of one of the proposed exceptions listed above. These terms follow the logic of the OSHA standards and recent interpretation, which place priority on access as the need arises. This principle is important because of the adverse health effects that may occur if access is denied. Also, this principle enhances an employee's ability to focus on the work being done, and improves the likelihood that safe train movements will occur.

It is important to note that each of these exceptions would require the carriers to provide facilities that "meet otherwise applicable sanitation standards." With this language, FRA intends that the alternate sanitation facilities offered by the carrier must meet the standards for sanitation equipment and servicing that apply to that workplace. For instance, if the alternate facility is located in an office building along the right-of-way that falls within the authority of OSHA for purposes of sanitation, FRA expects that the carrier will ensure that those OSHA standards concerning the presence and condition of toilet and washing facilities will be met. If this proposed standard is adopted as a final rule, FRA would be exercising jurisdiction over cab employee access to sanitary facilities, specific sanitation equipment on rolling stock, and the servicing and use of that equipment on rolling stock. FRA does not intend to oust OSHA's existing authority with respect to sanitation equipment, or its maintenance, where it exists elsewhere.

Paragraphs (b)(2)(i) and (b)(2)(ii) propose temporary exceptions to the requirement of a toilet facility that conforms with the proposed definition of toilet facility, until those nonconforming toilet facilities have been replaced with compliant ones. Paragraph (b)(2)(i) addresses a specific type of toilet facility that a Class I railroad carrier possesses on approximately 500 locomotive units. This toilet, referred to as a "Bogan," is similar to portable toilets that are often used at outdoor events, where the need for mobile, basic toilet facilities exists. This toilet, which does not meet the requirements of the proposed definition for toilet facility, has no flush mechanism and simply permits waste to flow to a tank below the toilet seat for storage, treatment, and periodic disposal. Chemicals are placed in the storage tank to treat the waste and minimize odors that would otherwise accumulate. Maintenance of these toilets may be a greater challenge than is the case with more contemporary technology, and failure to properly maintain them could result in unacceptable conditions.

The Class I railroad carrier owner of the Bogan toilets is replacing these units as they become defective, and is retiring them as the locomotives on which they are situated are retired. The Bogan toilets are being replaced with toilets that incorporate advanced technology. For that reason, the Working Group recommended that FRA permit these toilets to remain in use until they are retired by the railroad carrier as part of the railroad carrier's retirement plan. The proposed rule text permits the Bogan toilet to remain in service on this Class I railroad carrier until they become defective or are replaced with conforming units, whichever occurs first. Although FRA would prefer more modern systems in place on all locomotives, FRA is not presently aware of an imminent, serious safety or health risk associated with this type of unit that would mandate immediate removal. Given the costs associated with toilet retrofit and the railroad carrier's own plan to replace the units, FRA believes that in this instance an exception is appropriate. Finally, it is important to note that this carrier objects to and disagrees with any inference or statement that the current systems in place are inadequate or are not properly maintained.

As written, this exception would apply only to the Class I railroad carrier that FRA knows possesses these toilet systems. FRA is unaware of any other railroad carriers that utilize this toilet. However, FRA requests comments from the industry as to whether this system exists on other properties, and if so, what plans those employers may have for retiring or replacing the toilets. If the system is more prevalent than FRA now believes it is, final rule text language may need to be altered to accommodate the use of the systems on those properties. In making this determination, FRA would consider a variety of factors, including the number of toilets involved, the operational characteristics of the railroad operations in which the toilets are used, the programs the employer has in place to retire or retrofit the toilets, the economic status of the railroad carrier involved, and the effectiveness of the existing maintenance and servicing program for the toilet. As is stated above, FRA wishes to restrict and eventually eliminate the use of toilets that do not meet the definition of toilet facility proposed in this NPRM. In connection with this exception and the exception set forth in paragraph (b)(2)(ii) below, it is important to note that certain enforceable state standards may require flush toilets for cab employees, and the final standard FRA issues in this proceeding would preempt those standards. Therefore, FRA wishes to make every effort to minimize the use of non-flush systems in this proceeding. Clearly, FRA and the Working Group have no desire to issue or recommend standards that ultimately permit the use of systems that are more rudimentary than those permitted by existing state standards. However, FRA understands that certain accommodations may be necessary in the short term in order to achieve that goal.

Paragraph (b)(2)(ii) addresses a similar situation that exists on another Class I railroad carrier, in which the toilet facility in place on a majority of the carrier's locomotives does not comply with the proposed definition of toilet facility. These toilet facilities utilize carrier-provided plastic liners to collect human waste; these liners are then sealed, placed in sealed waste containers, and delivered by the

as discussed above. The unit may be used in this service for a period not to exceed 10 days, at which time it must be repaired or used in trailing position. If the railroad carrier chooses to utilize the equipment in this manner prior to its repair, the carrier must clearly mark the defective toilet facility so that a reasonable person would know not to use the toilet facility. The Working Group and FRA do not expect the railroads to reassign locomotives from road to yard service solely for the purpose of circumventing any part of this regulation. FRA understands that there are overriding incentives for railroads to keep road units with defective toilets in trailing road service until the next periodic inspection, rather than reassigning them to yard service. [It is also important to note here that this 10-day period may be shortened due to the fact the carriers may not need this amount of time to make effective repairs. See the discussion for proposed requirement for section 229.139(d) below for a more detailed discussion of this issue.]

Paragraph (f) of this section proposes that if the railroad carrier discovers during the daily inspection that a lead locomotive is not equipped with sufficient toilet paper, washing facilities, or a trash receptacle, the carrier must equip the unit prior to departure. This proposal reflects FRA's belief that it would be unwise to require a railroad carrier to change the consist makeup due to a lack of toilet paper, washing facilities, or a trash bag. However, FRA believes these items would be relatively easy to locate and supply to cab crews, and so should be provided before any employee is expected to depart. Therefore, the railroad carrier must simply equip the locomotive with these items prior to departure. As FRA understands present railroad practice, most railroad carriers supply these items to cab employees as they begin their work shift, and so this proposed requirement should not impose excessive burdens on the industry.

Paragraph (g) proposes that when it is discovered during the daily inspection that the sanitation compartment ventilation is defective, the carrier must repair it prior to departure, or place the locomotive in trailing position, in switching service consistent with the requirements of paragraph (b)(1)(ii), or in transfer service consistent with the requirements of (b)(1)(iii). As discussed earlier, the rationale for permitting this usage when the ventilation system is inoperative, is that trailing units are typically unoccupied, and so no harm would come from utilizing the locomotive in that position. In addition, the exceptions set forth in section 137(b)(1)(ii) and (iii) require the carriers to provide access to adequate facilities elsewhere, and so employees would be using ventilated facilities in those circumstances.

Paragraph (h) of section 137 provides that if the sanitation compartment is not equipped with a door that closes when pulled shut as of the daily inspection, the door must be repaired prior to departure, or the locomotive must be moved from lead position to trailing, transfer service, or switching service. In addition, this paragraph proposes that if the modesty lock, required to be present in order to prevent unintended intrusion, is defective as of the daily inspection, the locomotive may remain in use in the lead so long as the lock is repaired by the date on which the next 92-day inspection. [See discussion for section 229.139(e) below.] The rationale for this proposed paragraph is that the first priority for cab employees is to have the benefit of a door that closes while using toilet facilities, for each assignment in a lead locomotive in use. Therefore, the door must close as designed, as of the daily inspection. So long as the compartment door closes as it should, a unit with a defective modesty lock may remain in service until the date on which the next 92-day inspection would be required. FRA believes that affirming an employee's expectation of privacy while using toilet facilities will contribute to appropriate use of the facilities and consequent good health, and that this proposal accomplishes that end effectively. The proposal balances legitimate employee privacy needs, by requiring a door that closes, and the legitimate difficulties associated with making use of a locomotive while moving it to the correct repair facility, by permitting the locomotive with a defective modesty lock to remain in service for a limited time period.

Paragraph (i) provides that all locomotives which are equipped with a toilet facility on the effective date of the final sanitation rule, must retain and maintain those toilet facilities, even where the locomotive units might be relegated to switching service or transfer train service, where toilet facilities are not always required by this proposal. There is a small exception to this proposed requirement, which involves cabs that are not occupied. Where a railroad carrier downgrades a locomotive to "booster" or "slug" service, removing many of the interior appurtenances, so that the unit is no longer intended to be occupied in movement, the carrier may also remove the toilet facility. FRA strongly believes that this proposed paragraph is necessary to ensure that employee protections in the area of sanitation are not diminished as a result of this rulemaking. It would be ironic and unwise if FRA initiated a rulemaking, in consultation with industry representatives, to improve employee working conditions and railroad safety, which ultimately resulted in a workplace that was more hazardous to employees and railroad safety. Based on the proposed exceptions for switching and transfer train service, some railroad carriers might opt to remove toilet facilities in units being used in that service, to avoid maintenance and servicing costs. FRA proposes here to eliminate that alternative. Railroad carriers must retain toilets in equipped units in order to provide the most accommodating access to sanitation facilities available—an operable toilet on board the locomotive. Clearly, a toilet facility on the locomotive is preferable to one along the right-of-way. Employees can utilize it as the need arises, which diminishes the risk of health problems. They would not be forced to leave running equipment on the track or slow planned operations, which can create safety risks. Also, as older locomotives cascade down to the Class III railroads carriers, this proposal enhances the likelihood that small entities will inherit locomotives equipped with toilet facilities.

Paragraph (j) proposes that all new locomotive purchases made subsequent to the effective date of this rule, with two narrow exceptions, must include a toilet facility accessible to cab employees without walking outside. The design may require walking out of the cab into other compartments of the locomotive, but walking outside to use the toilet is disfavored. This paragraph reflects FRA's desire that all cab employees will work in a locomotive equipped with a toilet facility in the future.

The two narrow exceptions to this proposed requirement relate to switching units that are built exclusively for switching service and commuter locomotives designed exclusively for commuter service. With respect to the switching service exception, the Working Group and FRA recognize that these units that are created exclusively for yard service, and are often too small and oddly shaped to accommodate a toilet facility. Also, because of their size and configuration, these units are not used on long hauls over the road on which employees would clearly need toilet facilities in the cab. Under all circumstances, these

transfer train service, or in the trailing position that is equipped with a toilet facility, must be sanitary if the locomotive is occupied. This requirement would address those units that might fall within the exceptions proposed in sections 229.137(b)(1)(ii) and (b)(1)(iii) because of the operations they are engaged in, but nonetheless possess a toilet facility on board. If that is the case, employees may opt not to use the toilet facility, preferring to utilize other facilities along the right-of-way. However, carriers must not expose these employees to unsanitary conditions while they are in the units. Therefore, the toilet facilities may actually be defective while the unit is occupied, but they cannot be unsanitary.

Paragraph (d) proposes that where a locomotive is equipped with a toilet facility that has become defective, and the locomotive is utilized briefly in switching or transfer train service consistent with the requirements of sections 229.137(b)(1)(ii) and (b)(1)(iii), the railroad carrier must mark the toilet facility as defective. The locomotive with the defective, but sanitary toilet facility, can be used in switching or transfer train service for a period not to exceed 10 calendar days from the date on which it became defective, at which time it must be repaired. However, the facility must remain sanitary in this short period while it is occupied. The date on which the toilet facility became defective must be noted on the daily inspection report, so the unit will be repaired within the prescribed time period. The carriers may need to institute new internal procedures to ensure that these defects are corrected within the required time frame, because (as some members of the Working Group have suggested), defects that need not be repaired on a daily basis, as section 229.21 requires with many defective conditions, may be forgotten. This proposal would amend section 229.21(a) and (b) to permit the railroads to record repairs made electronically, rather than on the daily inspection report. Several carriers noted that they currently employ an electronic tracking system of defects and repairs, and would like to include violations of sections 229.137 and 229.139 in the existing electronic program. FRA wishes to facilitate this process, and so long as the system is capable of being audited, FRA does not believe it is necessary to regulate this internal mechanism with great specificity.

During this 10-day period, the exceptions set forth for switching and transfer train service would apply, and so the carrier would be required to provide the cab employees affected access to sanitation facilities to meet otherwise applicable sanitation standards. [As discussed previously, these defective units may also be utilized in trailing position where there is less likelihood that employees will be affected at all.]

Requiring that these defective units can remain in service for a period not to exceed 10 calendar days, at which time they must be repaired or used in trailing position, is consistent with FRA's and the Working Group's desire to preserve optimum access to sanitation facilities where they currently exist. If a locomotive is equipped with a toilet facility, FRA recognizes that it may become defective and yet the locomotive can continue to operate without jeopardizing the employee's health. However, the toilet facility should not be allowed to remain defective indefinitely. The Working Group and FRA do not expect the railroads to reassign locomotives from road to yard service solely for the purpose of circumventing any part of this regulation. FRA understands that there are overriding incentives for railroads to keep road units with defective toilets in trailing road service until the next periodic inspection, rather than reassigning them to yard service.

The 10-day period was selected as a result of Working Group discussions, in which the carriers noted that a period of 10 days may be required to get appropriate parts needed for repair to remote locations where these defective units may be situated. However, in subsequent discussions, the carriers indicated that they would likely haul the defective units to repair facilities, rather than wait for parts to be sent to remote locations. Also, Working Group members have stated that, in some instances, the carriers would only need additional time to make yard movements so that a compliant locomotive can replace the defective one. Therefore, FRA is considering reducing this 10-day time period to accurately reflect what would be reasonable given prevalent practice. FRA invites comment on this issue from interested parties concerning the time needed to haul units for repair, the time needed to replace the defective unit with another in the yard, and the extent to which those practices will occur.

Paragraph (e) proposes to require the railroad carrier to repair a defective modesty lock prior to the next 92-day inspection that the locomotive is subject to, pursuant to the requirements of part 229. This proposal was recommended by all members of the Working Group and balances the privacy concerns that led to the modesty lock requirement, against the industry's interest in keeping otherwise fit locomotives in service. FRA believes that this proposal reaches a reasonable accommodation of both aims.

In addition to the foregoing issues, the Working Group discussed blue signal protection for railroad employees involved in the servicing of the sanitation compartment, and the substance of those discussions should be illuminated here. FRA issued regulations that require protections for employees engaged in the inspection, testing, repair, and servicing of rolling equipment, where those activities require employees to work on, under, or between equipment, and where the danger of personal injury exists. See 49 CFR part 218. These regulations state that "servicing" does not include supplying locomotives with sanitary supplies. Therefore, employees engaged in replenishing toilet paper in the sanitation compartment would not be "servicing" the locomotive for purposes of part 218, and, therefore, would not require blue signal protection. However, other duties that employees may be engaged in relating to the repair, service, maintenance or emptying of the locomotive toilet facility likely would fall within the scope of Part 218 and would require the protections set forth there. This determination may depend on the toilet system in place, and so each railroad carrier must assess the need for blue signal protection on its property based on the configuration of the system in place and the functions employees perform relative to it.

Finally, this NPRM does not propose new lighting requirements for the sanitation compartment. The existing locomotive safety standards already require that "Cab passageways and compartments shall have adequate illumination." 49 CFR 229.127(b). This existing requirement effectively addresses the need for lighting in the sanitation compartment. The compartment must be illuminated so that occupants can clearly see all appurtenances, fixtures, and items present within the toilet area.

Appendix

FRA plans to revise Appendix B to part 229, Schedule of Civil Penalties, to include penalties for violations of those provisions as set forth in this proposal that will become part of the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See U.S.C. 553(b)(3)(A). Nevertheless, interested parties are

units would be used in yard service, where railroad carrier-provided sanitation facilities exist along the right-of-way, and are available for employee use. New units used in transfer train service would be required to be fitted with toilet facilities.

Similarly, the Working Group and FRA presently believe that commuter operations provide cab employees with sufficient access to sanitation facilities, along the right-of-way and elsewhere on the train. Therefore, FRA believes that the new construction requirements proposed in this paragraph need not include commuter locomotives.

With this requirement, FRA does not wish to chill innovation in the design of new equipment, but believes that toilet facilities should be located in close proximity to cab employees in lead locomotives, switching service, and transfer train service. Members of the industry agree that this proposal is appropriate.

Finally, paragraph (k) requires that where the washing system in place on the lead locomotive includes the use of water, the water must be potable. This proposed requirement is consistent with the principle that nonpotable water should not be used by humans for personal cleanliness, due to bacteria that may be present. As discussed above, railroad carriers may use waterless soaps, now available commercially, which would not require water; they may use bottled water that is potable; or they may use water in holding tanks located in the toilet compartment, so long as it meets the safe drinking water standards.

Section 229.139 Sanitation, Servicing Requirements

Section 229.139 proposes minimum servicing standards to ensure that sanitation compartments in occupied locomotives are not unsanitary or defective. Paragraph (a) states that the railroad carrier must service the sanitation compartments of lead locomotives in use so that they are sanitary. This proposed requirement means that the floors, toilet facility, and washing system must be free of trash and waste. It is reasonable to expect that, as a locomotive is used, some amount of dust and trash would accumulate. However, in order to meet the requirements of paragraph (a), the trash must be removed at regular intervals, and used, soiled paper products or human waste may not be present on the floor.

Paragraph (b) of section 139 requires that all components required by paragraph (a) of section 137 for the lead locomotive must be present consistent with the requirements of sections 137 and 139, and must be maintained so that they operate as intended. In this NPRM, FRA does not dictate when and how railroad carriers must empty, clean, and service toilets. Members of the Working Group advised FRA that these decisions vary greatly from property to property, and depend on weather conditions, degree of use, and the toilet system in place. These members further advised that a federal standard that established specific thresholds and time limits could result in unnecessary costs for some entities, and could actually reduce the level of safety and sanitation on others. Based on that information, FRA proposes language that requires each railroad carrier to develop an effective servicing program that suits the traffic, use, weather, equipment and other needs of the system so that cab employees are not exposed to full toilet bowls, missing seats, offensive odors, frozen units, dirty floors, ineffective ventilation systems, or any other condition that can reasonably be deemed unsanitary.

Following the Working Group's final meeting on sanitation and after FRA initially formulated this NPRM, a labor organization submitted information to FRA concerning a toilet system prevalent in the industry that utilizes a bacteriological treatment system. When this system functions as intended, water (with no biohazards remaining) is discharged to the track structure. The commenter alleges that this system may expose employees along the right-of-way to untreated human waste, or to substances that are otherwise harmful if the railroad carrier fails to service the toilet properly. This toilet meets the proposed definition of toilet facility, and presumably would continue to exist in large numbers throughout the industry after publication of any final rule in this proceeding. The regulations of the FDA, discussed above, prohibit the discharge of untreated waste from railroad equipment placed in service after July 1, 1972, and permit the discharge of waste that has been suitably treated to prevent disease. The bacteriological toilet system at issue meets the requirements of this FDA standard, so long as the system is being serviced and maintained to operate as intended. Based on the information provided concerning instances in which railroad employees along the right-of-way may be placed at risk if this system is not maintained properly, FRA will consider whether more specific servicing requirements are necessary in the final rule.

For instance, FRA could require that all railroads follow a maintenance program for each of the toilet systems in service on their property for the purposes of the servicing requirements in section 139. FRA could simply establish a requirement that all railroads follow the manufacturer's maintenance program for the toilet system in use. Alternatively, FRA could establish a requirement that each railroad would develop a maintenance program to meet appropriate effectiveness measures for each part of the toilet system. For example, to work properly, the aerobic bacteriological treatment toilet system presently employed by some carriers requires that, first, the treatment remain aerobic, and second, that bacteria be killed as the effluent exits the system. Although other chemicals or technology methods may be available in the future, presently, this second step is performed through the use of chlorine. As the aerobic bacteriological process must remain intact and not go septic, converting to anaerobic conditions, clear effectiveness indicators are required. Indicators that the process is no longer intact include very strong, putrid odors; observance that a full treatment tank will not drain; or large air bubbles returning to the toilet bowl via the waste flap following the flush cycle. To ensure the effectiveness measure of a railroad's maintenance of the whole aerobic bacteriological treatment toilet system may require statistical sampling of effluent for live organisms, including the bacteria. FRA might also require that, if such a toilet system ceases to function properly, presenting a risk that untreated waste might be discharged to the track, the unit must be plugged to prevent any such leakage in order to be used in a trailing position pending servicing. FRA seeks comments from all industry members on these proposals, the rule text language set forth in the NPRM, alternative language that would effectively eliminate the risks that employees along the right-of-way may face, and any other hazards that may exist which FRA has not addressed in this paragraph. FRA notes that a performance-oriented approach to this issue is preferred by FRA and others in the Working Group. However, FRA needs more information to determine how successful implementation of a performance-oriented approach could be monitored. FRA seeks comments on the issues and options associated with this type of toilet system. These comments will be considered by the Working Group prior to issuance of a final rule.

Paragraph (c) of section 139 proposes that any unit used in switching service,

$22,545. The burden for the following years is only 20 minutes per railroad per year to modify the toilet facility arrangements. FRA understands that it is common practice today for a Class III railroads to comply with the general requirements of providing ready access. Currently it is customary for a small railroad to drive out to a locomotive to carry a crew member to sanitary facilities when called. Hence, the concept of providing ready access to toilet facilities is not a new or significant burden for most Class III railroads since most of these railroads currently provide this service for their locomotive cab employees.

The Class III exemption from the requirement to have a toilet facility in the lead occupied locomotive is provided to ensure that feasible lower cost alternatives are provided for the potentially affected small entities. FRA and the Working Group understand the difficulties of retrofitting older locomotive units and see no reason to unduly burden small railroads, so long as access can be provided by alternative means. The Working Group and FRA believe that this exception is both necessary and acceptable.

The IRFA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a "significant" economic impact on a "substantial" number of small entities. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives, or lack thereof, in making a decision on the RFA for the final rule.

Federalism

FRA has analyzed the proposed rule according to the principles of Executive Order 13132 ("Federalism"). FRA has determined that this proposal, if adopted as a final rule, may have federalism implications. FRA's final sanitation standards would preempt all state efforts to regulate the nature and type of access to sanitation facilities generally required for cab employees. Further, FRA's final sanitation standards would preempt the maintenance of sanitation facilities located on board trains. As discussed above, the Locomotive Inspection Act has been interpreted to occupy the field of locomotive safety, including the regulation of appurtenances in locomotives, such as toilets. Nonetheless, some state regulatory bodies have promulgated and enforce state standards that require toilet facilities in locomotive cabs. FRA's sanitation standards would preempt those state standards. FRA believes this regulatory action is warranted, however, based on principles of interstate commerce and the need for uniformity of national standards. In addition, some State agencies have expressed the need for federal regulation in this area to provide uniform treatment and to prevent situations in which employees work without sanitation facilities where the State is powerless to enforce its requirements, due to operation of the occupational safety and health and railroad safety laws.

Consistent with the requirements of Executive Order 13132, FRA has and will continue to consult with State agencies as this rulemaking proceeds. This will be achieved primarily through the full RSAC Committee, which includes representatives of State interests. FRA will publish a federalism impact statement in the final rule that explains the concerns of the States, a description of the consultations with the states, and a statement of the extent to which the concerns of the States have been met in any final standards that are issued.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response (seconds)	Total annual burden hours (hours)	Total annual burden cost
229.137(d)—Sanitation—Locomotive Defective or Unsanitary Toilet Facility Placed in Trailing Service— Clear Markings— Unavailable for Use.	Class I & II railroads.	15,600 notices.	90	390	$3,250
229.137(e)–Sanitation—Locomotive Defective Toilet Facility—Clear Markings—Unavailable for Use.	Class I & II railroads.	5,200 notices	90	130	3,250
229.139(d)—Servicing—Locomotive Used in Transfer/Switching Service with Defective Toilet Facility—Date Defective.	Class I & II railroads.	936,000 notations.	30	780	19,500

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Comments must be received no later than March 5, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17,

welcome to submit their views on what penalties may be appropriate.

Environmental Impact

FRA has evaluated this proposal in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. The regulation of sanitation facilities on locomotives gives rise to two potential environmental concerns. The first relates to the handling of chemicals used to treat human waste while in transit or in storage awaiting permanent disposal. These chemical substances and employee exposure to them are currently regulated by EPA and OSHA, respectively, in order to prevent degradation of the environment and harm to employees. Nothing in this proposal alters those regulations, which protect the environment and employees from the hazards associated with regulated chemicals.

The second concern relates to the disposal of untreated waste along the railroad right-of-way, which would give rise to potential environmental and employee health hazards. As FRA understands it, nearly all locomotives utilize sanitation systems that either treat or burn the waste on board and release products that do not introduce environmental or personal safety hazards; or haul the waste in treatment containers to a site where it is removed and stored for approved processing. In any event, regulations promulgated by the FDA prohibit the release of untreated human waste along the railroad right-of-way, and nothing in this proposal alters that requirement. Therefore, FRA has determined that this proposal will not have a deleterious impact on the environment.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposal has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and a qualitative discussion of the benefits expected from the adoption of this proposed rule. Over a twenty-year period, the Present Value (PV) of the estimated costs is $75.4 million.

The major costs anticipated from adopting this proposed rule include: the on-going maintenance and servicing of toilet facilities that are not currently being serviced properly; an increase in the daily inspection burden to include additional components of the sanitation compartment; and providing a separate trash receptacle in the sanitation compartment and the removal of trash receptacles in regular intervals.

The major benefits anticipated from implementing this final rule include: guaranteed access to sanitary facilities; assurance that toilet facilities are maintained in a clean and sanitary manner; and the assurance that cab employees will have potable water to use. In addition, railroads should incur some savings from having a national and uniform regulation governing sanitation facilities. In the long-term, the FRA should see a decrease in complaints and correspondence related to toilet facilities.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Initial Regulatory Flexibility Assessment (IRFA) which assesses the small entity impact of this proposal. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

"Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a railroad business "line-haul operation" that has fewer than 1,500 employees and a "switching and terminal" establishment with fewer than 500 employees. SBA's "size standards" may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published an interim policy which formally establishes "small entities" as being railroads which meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's (STB's) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this alternative definition of "small entity" for this rulemaking. Since this is an alternative definition, FRA is using it in consultation with the SBA and requests public comments on its use.

For this rulemaking there are over 550 small railroads that could potentially be affected by these proposals. FRA estimates that small railroads own approximately 3,500 locomotives. In addition, the Agency estimates that only about one-third of these or less possess a toilet facility. FRA does not expect this proposal to impose a significant burden on small railroads because it provides them an exception from the requirement to have a functioning toilet in the lead occupied locomotive, so long as the railroad provides employee access to toilet and washing facilities at frequent intervals.

The impacts from this proposal are primarily a result of some of the compliance requirements for locomotives that have functioning toilet facilities. The most significant impacts are from compliance items associated with the proposed toilet facility requirements which include a trash receptacle in the toilet compartment, marking defective toilet facilities, and the daily inspection requirements. Most small railroads own locomotives that never had toilet facilities on them, or previously had them removed. FRA estimates that only six percent of the Regulatory Impact Analysis' (RIA) total cost over 20 years would impact small railroads.

The proposed requirement which impacts small railroads most is the requirement to provide ready access to appropriate toilet facilities. FRA has interpreted this requirement to mean that small railroad carriers must arrange for en route access to toilet facilities. The RIA has estimated that there would be a 2-hour burden per affected railroad during the first year of implementation. This burden is estimated to cost

3. Section 229.9 is amended by adding paragraph (g) to read as follows:

§ 229.9 Movement of non-complying locomotives.

* * * * *

(g) Paragraphs (a), (b), and (c) of this section shall not apply to § 229.137 and § 229.139. Sections 229.137 and 229.139 set forth specific requirements for the movement and repair of locomotives with defective sanitation compartments.

4. Section 229.21 is amended by removing the fourth and fifth sentences of paragraph (a) and adding in their place three new sentences and by removing the fourth sentence of paragraph (b) and adding in its place three new sentences to read as follows:

§ 229.21 Daily inspection.

(a) * * * Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that don't comply with §§ 229.137 or 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that don't comply with §§ 229.137 or 229.139 may be noted on the report, or in electronic form. * * *

(b) * * * Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that don't comply with §§ 229.137 or 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that don't comply with §§ 229.137 or 229.139 may be noted on the report, or in electronic form. * * *

5. Sections 229.137 and 229.139 are added to subpart C to read as follows:

§ 229.137 Sanitation, general requirements.

(a) *Sanitation compartment.* Except as provided in paragraph (b) of this section, all lead locomotives in use shall be equipped with a sanitation compartment. Each sanitation compartment shall be:

(1) Adequately ventilated;

(2) Equipped with a door that:

(i) Closes, and

(ii) Possesses a modesty lock by [18 months after publication of the final rule];

(3) Equipped with a toilet facility, as defined in this part;

(4) Equipped with a washing system, as defined in this part, unless the railroad carrier otherwise provides the washing system to employees upon reporting for duty or occupying the cab for duty, or where the locomotive is equipped with a stationary sink that is located outside of the sanitation compartment;

(5) Equipped with toilet paper in sufficient quantity to meet employee needs, unless the railroad carrier otherwise provides toilet paper to employees upon reporting for duty or occupying the cab for duty; and

(6) Equipped with a trash receptacle, unless the railroad carrier otherwise provides portable trash receptacles to employees upon reporting for duty or occupying the cab for duty.

(b) *Exceptions.*

(1) Paragraph (a) of this section shall not apply to:

(i) Locomotives engaged in commuter service on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive or elsewhere on the train, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(ii) Locomotives engaged in switching service on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iii) Locomotives engaged in transfer train service on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iv) Locomotives of Class III railroad carriers engaged in operations other than switching service or transfer train service, that are not equipped with a sanitation compartment as [of the effective date of this section]. Where an unequipped locomotive of a Class III railroad carrier is engaged in operations other than switching or transfer train service, employees shall have ready access to carrier-provided sanitation facilities outside of the locomotive that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift, or the carrier shall arrange for en route access to such facilities; and

(v) Locomotives of tourist, scenic, historic, or excursion operations, which are otherwise covered by this part because they are not propelled by steam power and operate on the general railroad system of transportation, but on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift.

(2) Paragraph (a)(3) of this section shall not apply to:

(i) Locomotives of a Class I railroad carrier which, prior to [the effective date of this section], were equipped with a toilet facility in which human waste falls via gravity to a holding tank where it is stored and periodically emptied, which does not conform to the definition of toilet facility set forth in this section. For these locomotives, the requirements of this section pertaining to the type of toilet facilities required shall be effective as these toilets become defective or are replaced with conforming units, whichever occurs first. All other requirements set forth in this section shall apply to these locomotives as of [the effective date of this section]; and

(ii) With respect to the locomotives of a Class I railroad carrier which, prior to [the effective date of this section], were equipped with a sanitation system other than the units addressed by paragraph (b)(2)(i) of this section, that contains and removes human waste by a method that does not conform with the definition of toilet facility as set forth in this section, the requirements of this section pertaining to the type of toilet facilities shall apply on locomotives in use shall apply on July 1, 2003. However, the Class I railroad carrier subject to this exception shall not deliver noncompliant toilet facilities to other railroad carriers for use, in the lead position, during the time between [the effective date of this rule] and July 1, 2003. All other requirements set forth in this section shall apply to the locomotives of this Class I railroad carrier as of [the effective date of this section].

(c) *Defective, unsanitary toilet facility; prohibition in lead position.* Except as provided in paragraphs (c)(1) through (5) of this section, if the railroad carrier determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad carrier shall not use the locomotive in the lead position. The railroad carrier may continue to use a lead locomotive with a toilet facility that is defective or unsanitary as of the daily inspection only where all of the following conditions are met:

(1) The unsanitary or defective condition is discovered at a location where there are no other locomotives available for use, it is not possible to

1120 Vermont Ave., NW., MS–17, Washington. DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Comments Requested

FRA has made every attempt in this proposal to capture the principles of accessible, sanitary, toilet and washing facilities for locomotive cab employees, in such a way that railroad operations will not be adversely affected. However, FRA invites comment from all interested parties on all aspects of this proposal. FRA and the Working Group made every effort to discuss and address cab sanitation comprehensively in this NPRM, but there may be issues, equipment, or operations that require further information and consideration. FRA requests comments from the public and experts on the scope and exceptions set forth in this proposal, the definitions established to identify equipment and procedures, the proposed servicing requirements, and anything not addressed by this proposal that deserves consideration.

List of Subjects in 49 CFR Part 229

Locomotives, Penalties, Railroad safety.

For the reasons set forth in the preamble, 49 CFR Part 229 is amended as follows.

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49.

2. Section 229.5 is amended by adding in alphabetical order new definitions of "Commuter service", "Modesty lock", "Potable water", "Sanitary", "Sanitation compartment", "Switching service", "Transfer train", "Toilet facility", "Unsanitary", and "Washing system'.

§ 229.5 Definitions.

* * * * *

Commuter service means commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, that runs on rails or electromagnetic guideways, but does not include rapid transit operations in an urban area that are not connected to the general system of transportation. *See also,* 49 CFR part 209, Appendix A.

* * * * *

Modesty lock means a latch that can be operated in the normal manner only from within the sanitary compartment, that is designed to prevent entry of another person when the sanitary compartment is in use. A modesty lock may be designed to allow deliberate forced entry in the event of an emergency.

* * * * *

Potable water means water that meets the requirements of 40 CFR part 141, the Environmental Protection Agency's Primary Drinking Water Regulations, or water that has been approved for drinking and washing purposes by the pertinent state or local authority having jurisdiction. For purposes of this section, commercially available, bottled drinking water is deemed potable water.

* * * * *

Sanitary means the absence of any significant amount of filth, trash, human waste present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or of strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove the waste; visible human waste residue on the floor or toilet seat that is present due to a toilet facility that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

Sanitation compartment means an enclosed compartment on a railroad locomotive that contains a toilet facility for employee use.

* * * * *

Switching service means the classification of railroad freight cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement.

Transfer train means a train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.

Toilet facility means a system that automatically or on command of the user removes human waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors.

Unsanitary means any condition in which any significant amount of filth, trash, human waste are present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or strong, persistent, chemical or human waste odors sufficient to deter use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove the waste; visible human waste residue on the floor or toilet seat that is present due to a toilet facility that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong persistent chemical or human waste odors in the compartment.

Washing system means a system for use by railroad employees to maintain personal cleanliness that includes a secured sink or basin, water, antibacterial soap, and paper towels; or antibacterial waterless soap and paper towels; or antibacterial moist towelettes and paper towels; or any other combination of suitable antibacterial cleansing agents.

switch another locomotive into the lead position, or which is not equipped to clean the sanitation compartment if unsanitary or repair the toilet facility if defective;

(2) The locomotive, while noncompliant, did not pass through a location where it could have been cleaned if unsanitary, repaired if defective, or switched with another compliant locomotive, since its last daily inspection required by this part;

(3) Upon reasonable request of a locomotive crewmember operating a locomotive with a defective or unsanitary toilet facility, the railroad carrier arranges for access to a toilet facility outside the locomotive that meets otherwise applicable sanitation standards;

(4) If the sanitation compartment is unsanitary, the sanitation compartment door shall be closed and adequate ventilation shall be provided in the cab so that it is habitable; and

(5) The locomotive shall not continue in service in the lead position beyond a location where the defective or unsanitary condition can be corrected or replaced with another compliant locomotive, or the next daily inspection required by this part, whichever occurs first.

(d) *Defective, unsanitary toilet facility; use in trailing position.* If the railroad carrier determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad carrier may use the locomotive in trailing position. If the railroad carrier places the locomotive in trailing position, the carrier shall not haul employees in the unit unless the sanitation compartment is made sanitary prior to occupancy. If the toilet facility is defective and the unit becomes occupied, the railroad carrier shall clearly mark the defective toilet facility as unavailable for use.

(e) *Defective, sanitary toilet facility; use in switching, transfer train service.* If the railroad carrier determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective, but sanitary, the carrier may use the locomotive in switching service, as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service, as set forth in paragraph (b)(1)(iii) of this section for a period not to exceed 10 days. In this instance, the railroad carrier shall clearly mark the defective toilet facility as unavailable for use. After expiration of the 10-day period, the locomotive shall be repaired or used in the trailing position.

(f) *Lack of toilet paper, washing system, trash receptacle.* If the railroad carrier determines during the daily inspection required by § 229.21 that the lead locomotive is not equipped with toilet paper in sufficient quantity to meet employee needs, or a washing system as required by paragraph (a)(4) of this section, or a trash receptacle as required by paragraph (a)(6) of this section, the locomotive shall be equipped with these items prior to departure.

(g) *Inadequate ventilation.* If the railroad carrier determines during the daily inspection required by § 229.21 that the sanitation compartment of the lead locomotive in use is not adequately ventilated as required by paragraph (a)(1) of this section, the railroad carrier shall repair the ventilation prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service as set forth in paragraph (b)(1)(iii) of this section.

(h) *Door closure and modesty lock.* If the railroad carrier determines during the daily inspection required by § 229.21 that the sanitation compartment on the lead locomotive is not equipped with a door that closes, as required by paragraph (a)(2)(i) of this section, the railroad carrier shall repair the door prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service as set forth in paragraph (b)(1)(iii) of this section. If the railroad carrier determines during the daily inspection required by § 229.21 that the modesty lock required by paragraph (a)(2)(ii) of this section is defective, the modesty lock shall be repaired pursuant to the requirements of § 229.139(e).

(i) *Equipped units; retention and maintenance.* Except where a railroad carrier downgrades a locomotive to service in which it will never be occupied, where a locomotive is equipped with a toilet facility as of [the effective date of the final rule], the railroad carrier shall retain and maintain the toilet facility in the locomotive consistent with the requirements of this part, including locomotives used in switching service pursuant to paragraph (b)(1)(ii) of this section, and in transfer train service pursuant to paragraph (b)(1)(iii) of this section.

(j) *Newly manufactured units; in-cab facilities.* All locomotives manufactured after [Effective date of the final rule], except switching units built exclusively for switching service and locomotives built exclusively for commuter service shall be equipped with a sanitation compartment accessible to cab employees without exiting to the out-of-doors for use.

(k) *Potable water.* The railroad carrier shall utilize potable water where the washing system includes the use of water.

§ 229.139 Sanitation, servicing requirements.

(a) The sanitation compartment of each lead locomotive in use shall be sanitary.

(b) All components required by § 229.137(a) for the lead locomotive in use shall be present consistent with the requirements of this part, and shall operate as intended.

(c) The sanitation compartment of each occupied locomotive used in switching service pursuant to § 229.137(b)(1)(ii), in transfer train service pursuant to § 229.137(b)(1)(iii), or in a trailing position when the locomotive is occupied, shall be sanitary.

(d) Where the railroad carrier uses a locomotive pursuant to § 229.137(e) in switching or transfer train service with a defective toilet facility, such use shall not exceed 10 calendar days from the date on which the defective toilet facility became defective. The date on which the toilet facility becomes defective shall be entered on the daily inspection report.

(e) Where it is determined that the modesty lock required by § 229.137(a)(2) is defective, the railroad carrier shall repair the modesty lock on or before the next 92-day inspection required by this part.

Issued in Washington, D.C. on the 15th of December, 2000.

Jolene M. Molitoris,

Administrator.

[FR Doc. 00–33363 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–06–P

Although no precise information was provided on that question, it became apparent that considerable interest in RCL use is being generated by manufacturers of the equipment and by railroads. It is expected that, as a result of the interest expressed, the use of RCL will increase.

Accordingly, BLE believes that the prudent and safe course makes it incumbent upon FRA to conduct a regulatory proceeding on RCL use. Such regulation(s) should address, at a minimum, the following subjects:

- design standards for RCL equipment, both on-board and off-board;
- methods for assessing risk to personal injury from the use of RCL equipment;
- proof of safety of RCL equipment, prior to its use, with respect to the life and limb of railroad employees, and the lives and property of the public living, working and traveling adjacent to railroad rights of way;
- regular inspection of the equipment to ensure its proper and safe maintenance;
- requirements for reporting the inspection, repair, and failure of equipment in use;
- prohibition of the use of defective equipment;
- operating rules, standards, procedures and practices;
- security;
- training; and
- other relevant matters that may arise during the rulemaking process.

Verifiable data proving the safety of RCL use has not been produced; consequently, we have seen nothing that would support an argument suggesting operational safety will not be degraded as a result of RCL operations. Moreover, data submitted to FRA pertaining to RCL use in the steel industry, where it has developed a considerable history, leads BLE to believe that a substantial risk associated with the use of RCL has been identified.

It has been argued by proponents of RCL that the railroad industry cannot be compared to the steel industry, with regard to its rail operations. However, no data has surfaced to repudiate the documented hazards of RCL use in the steel industry. FRA is in possession of the steel industry data and other data presented at the Technical Conference. BLE believes that the record FRA has developed on this issue is more than sufficient evidence that a regulatory proceeding is required.

BLE requests that the rule apply to all railroads under FRA's jurisdiction. To those who contend that there may be significant costs to the industry associated with development of RCL regulation, BLE responds that RCL rulemaking differs materially from typical regulatory action, because a RCL proceeding will not result in the mandated deployment of a costly piece of equipment; rather, it will ensure that any equipment ultimately deployed provides the safest possible operation. Contrary to the caution necessarily dictated by the potential risks inherent in RCL operations, the railroad industry

Brotherhood of Locomotive Engineers

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OFFICE OF CHIEF COUNSEL

EDWARD DUBROSKI
International President

118232

FRA-00-8422-1.

November 16, 2000

The Honorable Jolene M. Molitoris
Federal Railroad Administrator
U. S. Department of Transportation
400 Seventh Street, N.W.
Washington, D.C. 20590

Dear Madame Administrator:

The Brotherhood of Locomotive Engineers (BLE) is the duly designated and authorized collective bargaining representative under the Railway Labor Act, 45 U.S.C. §§151 et seq., of the craft or class of locomotive engineers on all the major railroads in the United States and Canada. As such, BLE has a duty to protect the life and safety of locomotive engineers that BLE represents. In that context, BLE petitions the Federal Railroad Administration (FRA) to provide rulemaking on the use of remote control locomotives (RCL), where the operation of such locomotive(s) is from a location other than the operating cab of a locomotive occupied by the crew.

Locomotive engineers have operated locomotives and trains from the operating cab for nearly 150 years. A "cab" is an appurtenance to a locomotive and is defined in 49 CFR §229.5 (b) as "... that portion of the superstructure designed to be occupied by the crew operating the locomotive." It is noteworthy, with respect to safety, that the historical and actual methods of operation — operating rules, signal systems, physical properties of the trains being operated, associated requirements for safe train handling, public awareness of railroad operations, and the safety of our fellow railroad employees — all have evolved from and are dependent upon the crew operating the locomotive from its attached cab.

FRA has a significant role in ensuring safe railroad operations. In fact, the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. Subtitle V Part A (Public Law 91-458, 84 Stat. 971),[1] requires the agency to investigate and promulgate regulations to enhance railroad safety, including the use of devices such as remote control.

Because of the profound changes that will likely result from the introduction of RCL, including the potential for the lessening of the safety of operations, FRA held a Technical Conference on July 19, 2000, to determine, among other things, the extent to which RCLs are in use in the United States.

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[1] Formerly codified at 45 U.S.C. §§431, et seq.

FRA-2000-8422

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Via Hand Delivery

November 17, 2000

Docket Clerk
Office of Chief Counsel
Federal Railroad Administration
U. S. Department of Transportation
400 Seventh Street, N.W.
Washington, D.C. 20590

Dear Sir or Madam:

Enclosed herewith, in triplicate, please find three (3) copies of the petition for rulemaking of the Brotherhood of Locomotive Engineers with respect to the use of remote control locomotives.

Very truly yours,

Edward Dubroski

President

enclosures

and RCL suppliers have indicated a desire to deploy RCL without any studies and possibly without regulations governing specifications and use. This regulation, properly written, will ensure that RCL will be used safely, provide a degree of consistency in RCL equipment, and permit FRA to meet its statutory obligation to railroad employees and the public through proper approval, testing, inspection, repair and reporting.

Requesting your immediate attention to this petition, I am

Respectfully yours,

Edward Dubroski

President

National Transportation Safety Board
Washington, DC 20594

1967 ~ 30 Years of Transportation Safety ~ 1997

Office of the Chairman

DEC 0 6 2000

Honorable Jolene M. Molitoris
Administrator
Federal Railroad Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Ms. Molitoris:

Information from unprotected railroad event recorders continues to be lost as a result of impact forces and fire associated with rail accidents. In the past 22 months, for example, five recorders were destroyed in three separate accidents.

On Wednesday, November 17, 1999, Union Pacific Railroad freight train UP 477, traveling about 40 mph, collided with UP 9117 that was stopped, secured, and unattended (NTSB accident DCA00MR001). The collision occurred on the nonsignaled Worthington Subdivision at Carnes, Iowa. Four locomotive units were destroyed and 29 freight cars were derailed. The collision damaged the fuel tanks of the striking train and a fire engulfed its two trailing units. The UP 477 conductor was killed. A contract van driver, waiting to meet UP 477 at Carnes, was killed when a derailed tank car rolled over his van. The engineer survived the collision and was transported to a local hospital where he was treated and released. All three recorders on the UP 477 locomotives were destroyed by impact and postimpact fire. As a result, information vital to the investigation of this accident was destroyed.

On January 17, 1999, in Bryan, Ohio, a Conrail train rear-ended a stationary Conrail train (NTSB accident DCA99MR001). This collision caused the derailment of a third Conrail train traveling on a parallel track in the opposite direction. A recorder on one locomotive involved in this accident was destroyed. On March 15, 1999, in Bourbonnais, Illinois, an Amtrak train was derailed after striking a truck at a grade crossing (NTSB accident DCA99MR003). The recorder from the lead locomotive was destroyed as a result of the collision and postaccident fire. The recorder on a lead locomotive is the only source of certain data (for example, horn operation and engineer-induced emergency brake application), and when it is destroyed, there is no other source for this information.

The Safety Board anticipates that the destruction of recorders will continue to occur in future accidents until rules concerning the crashworthiness of event recorders are developed and implemented.

In 1992, as part of its comments on the present regulations governing locomotive event recorder specifications, the Safety Board requested that the Federal Railroad Administration (FRA) consider mandating crashworthy recorders. When the FRA issued its final rule for Title 49 *Code of Federal Regulations* Part 229 in 1993, the agency pledged that event recorder crashworthiness would be "...explored with the objective of attaining cost effective improvements that will prevent destruction of data . . ." (58 FR 36610).

In a 1995 letter to the FRA, the Safety Board noted the continuing loss of event recorders, despite industry advances in recorder crashworthiness technology. In that letter, the Board asked the FRA to revisit its commitment to explore the merits of crashworthy recorders on locomotives. Later that year, the FRA formed the Industry Working Group on Event Recorder Performance Criteria. This working group held its first meeting in December 1995, at which time the Safety Board presented its proposed crashworthiness specifications. Further meetings of the group were repeatedly postponed and no working group activity took place until the Rail Safety Advisory Committee (RSAC) Locomotive Event Recorder Working Group was convened in September 1997.

The Safety Board has seven open safety recommendations to the FRA concerning locomotive event recorders: five are currently classified "Open—Acceptable Response," and two are classified "Open—Unacceptable Response." The five recommendations in the "Open—Acceptable Response" status, quoted below, were referred to the RSAC committee by the FRA:

> Revise 49 *Code of Federal Regulations* 229.25(e)(2) to require that event recorders, including microprocessor-based event recorders that are equipped with a self-test function, be tested during the quarterly inspections of the locomotive in such a manner that the entire event recording system, including sensors, transducers, and wiring is evaluated. Such testing should include, at a minimum, a review of the data recorded during actual operation of the locomotive to verify parameter functionality as well as cycling all required recording parameters and determining the full range of each parameter by reading out recorded data. **(R-96-70)**
>
> Inform the railroad industry that traction motor current is not a valid indicator of throttle position, and the requirement to record throttle position contained in 49 *Code of Federal Regulations* 229.5(g) cannot be met by recording traction motor current. Ensure that all operators currently using traction motor current as a substitute for throttle position modify their event recording systems to monitor and record throttle position directly. **(R-97-55)**
>
> Pending the result of your Railroad Safety Advisory Committee Event Recorder Working Group and your implementation of suitable requirements concerning event recorder system maintenance, require that microprocessor-based event recorders equipped to perform self-tests be subject to the testing and inspection procedures currently applicable to all other types of event recorders. **(R-97-56)**

Working with the railroad industry, develop and implement event recorder crashworthiness standards for all new or rebuilt locomotives by January 1, 2000. **(R-98-30)**

Require that event recorder system specifications be kept as part of the locomotive's records. **(R-98-57)**

The two recommendations in the "Open—Unacceptable Response" status, quoted below, were referred to the RSAC committee by the FRA and retain their present classification:

Revise your form F6180-49A to include event recorders in the Other Items To Be Inspected section on the form. **(R-96-72)**

Inform the industry that the placement of event recorders other than in the lead locomotive will not record the required data as though the event recorders were in the lead locomotive and ensure compliance with 49 Code of Federal Regulations 229.135(A). **(R-96-73)**

The RSAC working group, in which the Safety Board was an active participant, met regularly between September 1997 and March 1999. During these meetings, the group developed specifications for locomotive event recorder crashworthiness, as well as maintenance and minimum parameter requirements. The RSAC working group completed a draft proposal in March 1999, which the FRA was to develop into a draft notice of proposed rulemaking (NPRM). The draft NPRM was scheduled to be available to the RSAC working group for final comment by September 1999, with the goal of issuing the NPRM for public comment by the end of 1999.

This goal was reiterated by the FRA in May 1999 at the Safety Board's *International Symposium on Transportation Recorders* during the symposium's panel discussion with modal officials. However, at the most recent RSAC meeting, on May 18, 1999, no mention was made of a possible date for the completion of this NPRM, only that when it is completed, it would be distributed to the RSAC Event Recorder Working Group for comment. The working group received another draft NPRM on June 26, 2000, but the FRA gave no indication whether this document was the final RSAC-level draft prior to issuance of the NPRM, or when the NPRM would be issued.

The Safety Board is very concerned at the lack of progress and the FRA's lack of action on this vital issue. The absence of event recorder crashworthiness requirements has resulted in new, nonprotected recorders being fitted on new and overhauled locomotives, and also being purchased as replacements for economically obsolete recorders. In 1999 alone, about 1,200 new locomotives were manufactured and delivered to rail operators. None of these locomotives were required to be equipped with crashworthy recorders.

The Safety Board is very disappointed that the commitments made by the FRA to develop standards through RSAC Committee have not been realized. As a result of this lack of progress, Safety Recommendations R-96-70, R-97-55, R-97-56, R-98-30, and R-98-57 have been reclassified "Open—Unacceptable Response."

U.S. Department
of Transportation

**Federal Railroad
Administration**

SAFETY ASSURANCE AND COMPLIANCE PROGRAM (SACP)

ACCOMPLISHMENTS FOR CY 2000

Office of Safety

April 2001

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FEDERAL RAILROAD ADMINISTRATION
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I. Executive Summary

Background

The Federal Railroad Administration (FRA) ensures the safety of the Nation's railroad industry through the promulgation of safety regulations and the on-site monitoring of railroad operations. The FRA directs 400 Federal inspectors in 36 offices and 159 State inspectors from 30 States who oversee more than 675 railroads with more than 220,000 employees, 265,000 miles of track with 257,000 highway-rail grade crossings, 100,000 railroad bridges, 1.3 million freight cars, 20,000 freight locomotives, and 8,880 passenger locomotives, coaches, and self-powered coaches. The rapid growth of new railroads and traffic gains in recent years has increased demands on monitoring railroad industry compliance with safety regulations covering track, equipment, signals, the transportation of hazardous materials, and operating practices. Because of the limited number of Federal and State inspectors, the efficient use of these resources is critical.

The Agency traditionally relied upon site-specific inspections that focused on regulatory compliance as the primary means of safety oversight. While railroad safety had improved steadily since 1978, FRA was frustrated by the slow pace of progress. In addition, rail traffic has grown more than 50 percent since 1986. This dramatic increase significantly taxed FRA's resources and slowed the pace of safety improvements. In 1994, FRA responded to a Presidential Directive to "reinvent government" by developing a new approach to safety oversight, known as the Safety Assurance and Compliance Program (SACP).

The SACP is radically innovative because it brings a systems-analysis approach to safety oversight, provides a vehicle for the Agency to address safety issues outside the realm of regulation, and reduces the adversarial relationship that often exists between the regulator and the regulated community. Through SACP, railroad labor and management have engaged in collaborative partnerships with FRA to help identify and solve problems related to rail safety.

FRA's SACP augments traditional site-specific inspections and team inspections to help reach the Agency's performance goals. Only 5 to10 percent of FRA's resource time is allocated to SACP projects. Therefore, SACP efforts are not solely responsible for achieving the Agency's performance objectives. However, because SACP examinations look for root causes of systemic railroad problems, their success can have far reaching affects on railroad safety. For example, a site-specific inspection of a railroad signal malfunction may result in a repair order for that specific signal. A SACP multi-discipline inspection of the same railroad may uncover a systemic problem that could lead to repair orders for several hundred railroad signals.

The initial SACP used a team of FRA field and headquarters safety specialists, under the direction of a project manager, to conduct coordinated safety assessments of an entire railroad's operations. This included an historical analysis of all accident and inspection data over the most recent five-year period to determine historical trends, and large-scale site inspections in all railroad inspection disciplines to gain a firsthand look at current conditions. Also, "listening sessions" were held with railroad employees, union representatives, supervisors and managers—those most intimately involved in railroad safety to learn about their safety concerns. To foster cooperation, FRA exercised enforcement discretion regarding safety violations that are voluntarily disclosed through this process. From the information gathered, the FRA team identified systemic safety problems, which may include issues that are not subject to Federal safety regulations, and made recommendations to address root causes of the problems. FRA's

Partnership Success Story - Switching Operations Fatality Analysis (SOFA) Working Group

To eliminate train and engine service employee fatalities, FRA and 13 representatives from rail labor and management (the SOFA Working Group) conducted a detailed fact-finding review and analysis of 72 train and engine service employee fatalities that occurred between 1992 and 1998. The Working Group examined whether trends or patterns could be found, to identify "best practices," and, if possible, formulate recommendations for the entire industry based on the findings.

The SOFA Task Force published its findings in October 1999. Through the SACP process, each railroad is implementing the recommendations that benefit its safety program. The SOFA report provided specific recommendations: to improve the protection for employees adjusting draw bars or installing end-of-train devices and for employees who were being injured by equipment from other trains on adjacent tracks; to improve crew communication; and to improve the training of less experienced employees. In addition, factors contributing to SOFA accidents were identified and evaluated, and database improvements were suggested to provide a broader range of information for analysis.

Finally, at its September 14, 2000, meeting, the Railroad Safety Advisory Committee (RSAC) developed and approved the following declaration:

> "We, as the railroad community, will initiate an unprecedented sustained safety campaign on the crisis situation responsible for causing deaths and injuries that occur during switching operations. This underscores our commitment to zero tolerance. Our campaign will include:
>
> - an immediate assessment of the switching operations environment and its risks through increased observations and audits with participation by labor, management, and FRA.
> - increased commitment by managers and employees to communicate the message and instill the sense of urgency for change.
> - a defined plan to address safety risks built on the Switching Operations Fatality Analysis (SOFA) report and the "Five SOFA Lifesavers."
> - direct communication to all employees and their families, outlining the crisis and asking for their help in correcting the problem to eliminate these deaths and injuries."

The railroads have done a good job of implementing the action items contained in the RSAC Declaration. Virtually all of the railroads have completed an assessment of their switching operations, communicated the message contained in the SOFA Report, established a plan to address safety risks identified during their audits, and asked their employees and families to help in communicating the SOFA message.

Much of the success of the SOFA program has come directly from each employee's increased recognition and understanding of his/her working environment and safety responsibilities. In addition, labor has shown a commitment to the process and to being partners in solving problems inherent with the implementation of the SOFA recommendations. Lastly, FRA published a

findings and recommendations were presented to rail management and rail labor leaders in "Senior Management Meetings" to ensure that safety problems were brought to the attention of the company's decision makers. The railroad developed a Safety Action Plan (SAP), usually in conjunction with labor and FRA, that provided detailed corrective actions and a schedule for implementation. The FRA team monitored the implementation of the SAP and its effectiveness in solving problems.

SACP - Evolutionary Process

Since its inception, SACP has evolved. When SACP was first initiated, FRA envisioned only one type of SACP examination: the audit model. In actual use, SACP has been adopted to a variety of different environments and management cultures. Over time, FRA has identified many positive aspects of the program–what works well and what needs improvement. For example, the identification and correction of the root causes that involved employee-fatigue management (a major safety concern) and internal-process changes on the largest railroads did not lend themselves to an audit-type project.

This experience and innovative leadership by FRA, State partners, railroad management, and labor organizations resulted in gradual shifts and changes in the application of SACP. The cumulative effect was to significantly add to the depth of SACP and to the adoption of "best practices approach" to solving problems–options for correcting safety issues and program processes. The experience also helped to identify areas where changes were needed to improve the overall effectiveness of SACP.

Recent "FRA Customer" surveys show enthusiastic support for SACP. Rail labor and management agree on the safety improvement benefits of the program. While FRA continues to use the original "audit model" process for small railroads or specific facilities, a different kind of SACP review—the ongoing partnership—has become the norm for the larger railroads. Using this process with the larger railroads, FRA hopes to institutionalize the "best practices" approach and to continue to make improvements to increase effectiveness.

Systems Approach - Rectifying the Root Cause

The SACP has resulted in a more efficient handling of safety problems. For example, by using the "systems" approach to safety, a malfunctioning train signal at a specific location was traced to a software design error in the central dispatching system. In identifying and rectifying the root cause of the problem, SACP corrected potential signal problems at 400 other locations throughout the system.

Benefit of Partnership - Addressing Safety Concerns Where No Regulations Exist

By fostering collaborative partnerships, FRA has gained the cooperation of rail labor and management in addressing safety-critical issues in areas where no regulations exist. For example, a SACP investigation of a series of highway-rail grade crossing signal failures revealed inadequate training of the signal maintenance forces as the root cause. Despite the lack of regulations, mandating signal maintenance employee training, SACP participation persuaded the railroad to develop a training course for more than 140 signal employees. The result was a 60 percent decline in crossing-signal failures.

Region 1: SACP Success Story

Under the auspices of the Amtrak SACP, a joint partnership of FRA, Amtrak, and the Brotherhood of Locomotive Engineers (BLE) identified and eliminated on-board cab signal anomalies encountered with the introduction of the new Advanced Civil Speed Enforcement System (ACSES) on the Northeast Corridor (NEC) between New Haven, Connecticut, and Boston, Massachusetts. With the introduction of Acela Express service in late 2000, on-board cab signal anomalies developed with the operation of the Acela powercars and the high horsepower locomotives operating between South Attleboro, Massachusetts, and Canton Junction, Massachusetts. FRA called for a meeting with Union Switch & Signal, Incorporated, Harmon Industries, Amtrak, and Bombardier, Incorporated at which compatibility problems between wayside and on-board signal systems were identified and analyzed. A solution was proposed and Amtrak will now modify approximately 300 wayside amplifier printed circuit boards and modify on-board software to correct this problem.

Region 2: SACP Success Story

SACP has the flexibility to create a partnership team to respond swiftly to railroad safety conditions that impact local communities. In response to a specific community safety concern in West Virginia, a "Targeted Safety Zone" partnership was created on the Ohio River Subdivision of CSX Transportation (CSXT). Designed to eliminate train accidents along a high-profile line adjacent to the Ohio River, the "Targeted Safety Zone" initiative has achieved most of its calendar year 2000 goals. The partnership, which involved CSXT, FRA, local officials, and Congressional staff, resulted in a railroad commitment to track improvements including the installation of 54 rail miles of 136-pound rail, and 31,000 crossties. The total railroad investment in this project is approximately $20 million.

Region 3: SACP Success Story

Region 3 undertook an analysis of accidents, injuries, and hazardous materials incidents, for all railroad terminal operations within the region. The resultant data indicated that terminal operations in Memphis, Tennessee, had the highest number (32) of accidents/incidents. Using a multi-inspection-discipline, labor, management and FRA SACP approach, individual railroads operating within the Memphis Terminal were evaluated. These include the Burlington Northern Santa Fe Railway (BNSF), Canadian National Illinois Central Railroad (IC), CSXT, Norfolk Southern Corporation (NS), Union Pacific Railroad (UP), National Railroad Passenger Corporation (Amtrak) and the Memphis Area Transit Authority (MATA). The review identified problems on each of the properties. Through partnership efforts, safety action plans for reducing human-factors caused accidents have been presented to FRA. FRA continues to monitor the implementation of these plans while observing a reduction in the number of accidents/incidents occurring at this location.

Region 3: Shortline Success Story

As part of a SACP project in the South Florida Rail Corridor, the Atlanta Regional Office facilitated meetings to address trespasser and crossing safety issues. This led to a joint effort with the City of Miami, FRA, the Florida East Coast Railway Company (FEC), Amtrak, and Tri-Rail, to address trespassing on the FEC right-of-way in the Liberty City section of Miami. Since this partnership effort went into effect, FEC railroad security reports that incidents of vandalism and trespassing have been significantly reduced.

Railroad Safety Advisory, including the RSAC Declaration, in the *Federal Register* on November 2, 2000.

SACP - State-of-Safety Roundtable

On June 12, 2000, the FRA Administrator chaired a safety roundtable discussion to discuss SACP successes, challenges, and ways to increase safety in the future. More than 100 railroad labor and management representatives, joined representatives from FRA, the National Transportation Safety Board (NTSB), and the Office of the Inspector General (OIG) to identify several key factors for ensuring a successful SACP program. These are: the importance of trust and communication; the need for a personnel and budgetary commitment to training; and the importance of quantifying the added value that partnering brings. A primary focus of the roundtable was a discussion of the SOFA working group efforts to eliminate the yard-switching fatalities. Highlights included:

- The Norfolk Southern observed that SACP works best when it is task oriented.
- The Brotherhood of Maintenance of Way Employes recommended that FRA increase administrative support for the SACP program.
- The American Public Transportation Association (APTA) acknowledged the joint FRA/APTA/other rail partners effort in conducting a safety system audit of the Tri Rail Commuter Railroad. Partnerships were developed using SACP protocols.
- The Burlington Northern Santa Fe Railway supported task-oriented SACPs, which resulted in more than 235 safety issues being resolved during the past four years.
- The Canadian Pacific Railway's representative observed that there must be a commitment by everyone in the SACP process, and that those committed need to participate.
- The short-line railroads announced that there had been 36 SACP training sessions as of the end of June 2000.
- The railroad representatives (union and management) noted that the cultural evolution of a disciplinary policy that was punitive to one that is remedial and educational has had a significant impact on safety. Across the railroad system there has been a 40 percent reduction in disciplinary actions, while safety improved.
- The SACP cultural process is now being successfully implemented on the Class II and III railroads with success.
- Other highlights included instituting management accountability programs, fatigue management programs, and focusing on crew utilization and training.
- There was consensus on the need for root-cause analysis training.

Region 4 and 8: SACP Success Story

FRA Regions 4 and 8 jointly initiated a SACP project in partnership with the Dakota, Minnesota & Eastern Railroad Corporation's (DME) management and craft employees to identify systemic and root causes of safety and compliance concerns. As a result of meetings between FRA and employee groups (listening sessions) and a railroad "Safety Audit" to examine the DME's compliance with operating practice, equipment, track, signal, and hazardous materials rules, FRA identified 75 concerns and issues needing resolution. The railroad is addressing these issues through a safety action plan, whose implementation FRA continues to monitor.

Region 5: Houston Terminal Safety Action Plan Success Story

An ongoing SACP safety action plan at the Houston (Texas) Terminal has reduced a very high track-caused derailment rate of 50 or more per month in 1997, to two or three minor incidents per month in 2000.

Region 6: Accident Prevention Plan and SOFA Success Story

Region 6 Operating Practices (OP) Inspectors began a railroad terminal Accident Prevention Plan in December 1999, using SACP partnership protocols. The goal was to reduce human-factors-caused train accidents and injuries, especially in switching operations. Railroads were selected for review based on accident and injury data supplied by FRA's accident/incident database. In September 2000, SOFA principles were incorporated into these activities. In the past year, the Region has seen a 17.4 percent decrease in human-factors-caused accidents and a 23.9 percent decrease in injuries.

Region 7: SACP Success Story

An FRA Region 7 SACP partnership with Amtrak, the Union Pacific Railroad, the Brotherhood of Locomotive Engineers, the International Brotherhood of Electrical Workers, and the California Public Utilities Commission corrected a systemic record keeping problem involving contract maintenance on, and safety inspections of Amtrak locomotives. Subsequent audits are showing improved accountability for Amtrak locomotive maintenance reporting and repairs.

Region 8: Montana Rail Link (MRL) Success Story

FRA Region 8 worked in partnership with labor and management of MRL to address crucial safety and cultural issues. MLR is one of the Nation's largest Class II railroads. As a result, of these partnership efforts, MRL's safety record improved from 13 injuries per 200,000 man-hours at the railroad's inception in 1987 to 1.3 in 2000. MRL was subsequently recognized nationally, when awarded the annual Harriman Bronze Medal Award for Safety.

SACP Benefit - Direct Investments in Safety

In addition to direct safety improvements, SACP partnerships have also enabled FRA to persuade selected railroads to make direct expenditures that will improve safety. For example, one commuter railroad invested an additional $8 million in maintenance and training. And beginning in 1998, the UP increased its work force following a SACP examination highlighting significant understaffing at the railroad.

Best Measure of Effectiveness - Railroad Safety Performance

Under SACP, the last six years have been the safest in the railroad industry's history. The data below compare rail industry safety improvements for 1993–the year prior to the implementation of SACP, and 2000.

	1993	2000 *	Percent Improvement 1993-2000 *
Train Accident Rate	4.25	4.08	4.0%
Rail-Related Fatalities	1,279	934	27.0
Rail Employee Fatalities, Injuries, and Illnesses	15,410	8,312	46.1
Grade Crossing Fatalities	626	416	33.5
Trespasser Fatalities	523	469	10.3
Employee Fatalities	47	24	48.9

* Year 2000 data is preliminary.

Class I Railroads

(Percentage Change–1993 to 2000–Year 2000 data is preliminary)

- NS's total accident/incident rate, highway-rail grade crossing incident rate, and employee on duty casualty rate declined 42.2 percent, 58.7 percent, and 29.6 percent, respectively.
- UP's total accident/incident rate, total train accident rate, highway-rail grade crossing incident rate, and employee on duty casualty rate declined 44.7 percent, 13.6 percent, 46.8 percent, and 51.2 percent, respectively.
- CSXT's total accident/incident rate declined 9.1 percent. CSXT's highway-rail grade crossing incident rate dropped 42.3 percent.
- BNSF's total accident/incident rate, total train accident rate, highway-rail grade crossing incident rate, and employee on duty casualty rate declined 50.2 percent, 22.3 percent, 35.2 percent, and 63 percent, respectively.
- Amtrak's employee on duty non-fatal casualties declined 29.3 percent. Amtrak's trespasser and highway-rail grade crossing fatalities fell 11.1 percent and 27.1 percent, respectively. Amtrak's trespasser and highway-rail grade crossing non-fatal casualties dropped 24.5 percent and 10 percent, respectively.
- IC's train accident rate declined 43.3 percent. IC's highway-rail grade crossing incident rate declined 46.9 percent. IC's employee on duty casualty rate fell by 6.7 percent.
- KCS's highway-rail grade crossing incident rate declined 20.7 percent.

II. Appendix - Details for Class I Railroads

Safety Assurance and Compliance Program
Accomplishments for CY 2000

Burlington Northern Santa Fe Railroad (BNSF)

Cultural Transformation

1. The BNSF-SACP team is implementing a five-year strategic safety plan approved on July 23, 1999. The plan establishes a process of employee empowerment and refers safety issues to system groups for resolution. Using this strategy, forty safety issues related to maintenance-of-way, mechanical, and transportation deficiencies are being corrected. The plan calls for a joint effort to ensure the highest level of safety for all, a commitment to adhere to all regulations, a workplace free of harassment and intimidation, and the joint creation of work practices and tools to enable the BNSF employees the opportunity to perform their tasks safely. One immediate result has been an improvement in how end-of-train devices are serviced, making this operation safer for mechanical employees. The empowerment process itself is now imbedded into the day-to-day decision making.

2. On June 1, 2000, the BNSF issued a new Policy for Employee Performance and Accountability (PEPA). This policy maximizes the use of coaching, counseling, and other alternative discipline options for correcting rules violations by employees.

3. The BNSF SACP resolved issues regarding operating practices at the BNSF Network Operations Center (NOC) and the joint BNSF-UP Dispatching Center at Spring, Texas. FRA is a stabilizing force on the NOC Safety Council. Since the region began participating in this council, there have been no formal complaints forwarded to the FRA by the NOC dispatchers.

4. A SACP task force developed and implemented an injury-reporting policy, which allows employees with symptoms of skeletal muscle injuries to delay reporting an incident to the railroad for up to 72 hours without fear of discipline for late reporting.

SACP Process Improvements and Audit Results

Grade Crossing Safety and Trespass Prevention

1. Another FRA/BNSF SACP partnership is emphasizing grade crossing safety. In 1999, BNSF spent more than $50 million on grade-crossing-related programs. BNSF has established 22 grade crossing safety manager positions, and eight public crossing closing managers to work on grade crossing safety and crossing closures. Subsequently, the BNSF has been able to close 170 grade crossings in 1999 and 619 in 2000.

   The BNSF reported 528 highway-rail grade crossing collisions in 1996 and 536 in 1997. In the three years since implementing the SACP program, BNSF has reduced the number of collisions at public crossings to 445, a reduction of 17 percent. The national statistics indicated an overall industry improvement of 15.7 percent over the same period.

8. A database has been developed for the tracking of safety issues by the BNSF-SACP team. This database will be shared by railroad labor, management, and FRA personnel at the system and division levels.

Training Improvements

1. A SACP-developed lesson plan for continuing education has been distributed to signalmen and signal maintainers on the BNSF. Also, a mentoring program has been developed whereby newly promoted signal maintainers will be provided with a mentor until they are familiar with their assigned territory and the equipment on that territory.

2. A SACP team identified all highway-rail grade crossings on the BNSF that have significant commercial/industrial truck traffic and targeted the user companies for educational training. This approach is helping to contribute to a decline in highway-rail grade crossing collisions involving these types of vehicles.

3. Using SACP protocols, BNSF changed its philosophy from using a small group of full-time Operation Lifesaver, Incorporated presenters to using its own grade crossing managers to coordinate the activities of more than 200 employee and citizen volunteers.

4. Using SACP protocols, BNSF established a partnership program with local law enforcement personnel. The carrier is providing one-on-one training to police officers, "Roll Call" instruction and videos, joint positive enforcement activities, 315 Officer-on-the-Train events, and 241 Grade Crossing Collision Investigation classes. This program has been certified by the National Sheriff's Association and the International Association of Chiefs of Police.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing, and Crew Utilization

The BNSF has successfully implemented more than 60 programs that allow train and engine crews to have assigned days off. The BNSF, which pioneered train crew napping policy in the rail industry, has been successful in changing the railroad industry's General Code of Operating Rules (GCOR) to include rules that allow train crews to nap while on duty. This change in the GCOR makes napping available as a fatigue countermeasure to most train crews working on railroads in the western United States.

CSX Transportation, Inc. (CSXT)

Cultural Transformation

1. The CSXT ~~SACP~~ Team implementation of the new Individual Development and Personal Accountability Policy is the cornerstone for the culture transformation on CSXT. As a result, employee suspensions and dismissals are low, compared with statistics prior to the implementation of this policy. The majority of cases requiring disciplinary action are the result of positive employee drug and alcohol tests and violations of railroad operating rules.

2. After months of negotiations, an FRA/CSXT SACP team successfully negotiated a safety agreement between CSXT and rail labor that should result in safety improvements for maintenance of way employees.

SACP Process Improvements and Audit Results

Grade Crossing Improvements

Through a joint agreement between CSXT and FRA, the installation of emergency information notification signs at CSXT's highway-rail grade crossings has been expanded to its newly acquired Contrail trackage in 2000. The installation of these signs is improving the ability of local emergency responders and the motoring public to quickly and accurately report when a vehicle is stalled on a crossing, enabling CSXT to take effective measures to prevent an accident.

CSXT experienced numerous collisions at highway/rail grade crossings in 2000 with commercial vehicles, which resulted in the development of a Commercial Vehicle Risk Reduction Task Force. The task force is represented by rail labor, trucking industry officials, Amtrak, NTSB, FRA, and many other organizations with a vested interest in reducing these collisions. The task force is divided into five subcommittees, which focus on Education Outreach, Customer Outreach, Enforcement, Operations, and Grade Crossing Closures.

Safety Process Improvements and Audit Results

1. The FRA is very concerned about an increase in track-caused accidents on CSXT. Following a two-week system audit by FRA and State inspectors, FRA, CSXT, and the BMWE participated in the first-ever SACP initiative to assess maintenance-of-way staffing levels. The SACP audit report makes recommendations for correcting safety issues involving the adequacy of maintenance-of-way manpower levels, replacement of rail, ties, and ballast, and track surface renewal. A Compliance Agreement was signed and continues to be monitored by FRA.

2. The Signal and Train Control (S&TC) SACP team implemented an aggressive plan to eliminate pole line deficiencies across the CSXT system. By CY 2000, all of the deficiencies had been addressed.

3. At the CSXT Operations Center, a SACP team examination exposed 16 audit issues relating to communications, workload, protocols for dispatchers to give/receive

instructions, training, physical structure, and security. Each of these concerns were corrected or resolved in 2000.

4. The SACP Event Recorder Enhancement Team corrected problems with the software used to download and test locomotive event recorders. In addition, CSXT established written procedures for testing each device, resulting in a 90 percent improvement in record keeping.

5. The SACP Calendar Day Inspection (CDI) Process team audit developed a random sampling technique to check compliance with 49 CFR 229.2 regulations. All of the former Conrail territories are undergoing the same review. The program provides written guidelines for the daily inspection of locomotives at each location. The program has resulted in the resolution of many serious safety conditions on the railroad, including cracked wheels on locomotives.

6. An FRA/CSXT SACP team devised a method to tag, mark, or easily identify a defective Trailer on Flat Car (TOFC) hitch, or Container on Flat Car (COFC) component to alert loaders, groundsmen, and railroad personnel of defective components before attempting to load a container or trailer onto the equipment. There are no federally mandated standards requiring TOFC/COFC freight cars to be removed from service when securement equipment is defective. In many cases, the car remains in service and interchanged at expose railroad facilities where knowledge of the defective condition may not be known. CSXT has agreed to use a bright orange tag, similar to a bad-order tag on defective TOFC/COFC components.

7. The Hazardous Materials SACP team found that the hazardous materials crews were not being provided the proper documentation for hazardous materials movements. To prevent regulatory noncompliance, the train dispatcher is now notified if a car containing hazardous materials is found without the proper train documentation. The train dispatcher arranges to have an updated CSXT train document delivered to the train crew. If this is not possible, the information required to move will be transmitted to the crew over the radio and printed legibly on a radio waybill form (a new form just created by CSXT). These forms are available at all on-duty locations. This initiative has reduced the number of hazardous materials incidents.

Training Improvements

1. The FRA/CSXT Track Inspector SACP team established a certification procedure for CSXT track inspectors. As a result, CSXT Track inspectors are now required to demonstrate their practical knowledge to senior officials at CSXT and pass an FRA track safety standards exam. The staff is better trained and has done an improved job of ensuring track safety.

2. The Roadway Worker Protection (RWP) SACP team developed a comprehensive safety training program for contractors who perform track work on CSXT. The contractors serve as key members of the safety team. CSXT took a leadership role to improve the safety culture throughout the system. The team also conducted a RWP survey to determine the employees' knowledge of RWP rules. As a result of the survey, all CSXT general managers, engineers, and contractor personnel received training on RWP.

3. Based on the recommendations of the SACP Train Dispatcher team, CSXT hired 80 new dispatchers and trained 15 new dispatchers on workloads, protocols on how dispatchers receive instructions, physical structures, and security. The quality-of-life concerns of the SACP team were resolved by the remodeling of the dispatching center. These initiatives have resulted in better trained and less fatigued workers.

4. The Crew Utilization SACP team improved the accuracy of the train line-up from 61 percent in January 1999 to 75 percent in June 2000. Seventy-five percent of the crews are now provided with organized work plans concerning their tours of duty. The results have been a significant reduction in fatigue (a primary contributor to safety errors) and a reduction in employees idle time, improved customer confidence in the railroad, and more productive employees.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing, and Crew Utilization

The Fatigue Countermeasure SACP team educated and trained employees on train scheduling practices, emergency response requirements, and alertness strategies. The results are significant. Eighty-four percent of the engineers and 46 percent of the crew now have assigned rest days.

Illinois Central Railroad (IC)

Cultural Transformation

A joint FRA/IC SACP recommended changes in the adversarial way IC managers and labor leaders conduct business, particularly in the southern portion of the IC system. This partnership is resulting in more open lines of communication without the fear of intimidation or reprisal.

SACP Process Improvements and Audit Results

SACP partnership audits were conducted on a number of the IC's internal programs. As a result, the IC's Harassment and Intimidation program was completely revised. New procedures were also established for conducting Efficiency Tests and Inspections. In addition, the IC System Timetable Airbrake & Train Handling Rules were revised, improvements were made to the IC's Control of Alcohol and Drug Use Program, and new procedures were established for Roadway Worker Protection for individuals working on or about the track, particularly in the Baton Rouge, Louisiana District. Finally, a new procedure for the protection of on-track personnel working within Yard Limits is being developed. The IC completely revised the administration and monitoring of their Locomotive Engineer Certification Program.

Training Improvements

An FRA/IC SACP project resulted in the development and implementation of a comprehensive training program including written, visual/oral instruction and Instructor-demonstrated "on-the-job" training for both locomotive and car department personnel. In addition, the railroad has signed a long-term agreement with the consulting firm, Rail Safety and Training Resources, Incorporated, to provide specialized training to engineers, conductors, and trainmen.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing and Crew Utilization

Improvements in Manpower, Staffing and Crew Utilization

An FRA/IC examination of dispatcher workloads, resulted in the Homewood, Illinois Dispatching Center hiring three additional dispatchers and three dispatcher trainees.

Kansas City Southern (KCS)

Cultural Transformation

As a result of an FRA/KCS Locomotive Maintenance Department labor/management partnership, there has been both improved safety compliance and lowered "down time" of equipment undergoing repairs.

SACP Process Improvements and Audit Results

An FRA/KCS SACP Hazardous Materials Team conducted audits of the carrier's shipping paper and train lists. Serious violations were discovered in several areas which were immediately addressed by the carrier with aggressive safety action plans. FRA is currently monitoring the completion of those plans and has participated in training of carrier personnel to gain compliance.

Training Improvements

Personnel training has improved through the addition of a second locomotive simulator on the property. KCS is now training a sufficient number trainmen and engine men to keep up with personnel attrition.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing and Crew Utilization

1. Renewal of the locomotive fleet with high power units equipped for distributed power remote control features have virtually eliminated manned helper service on KCS freeing personnel to rejoin pool and extra board assignments. This has greatly alleviated the manpower shortages and has allowed a return to a more liberal elective lay-off policy, greatly increasing morale and home terminal rest time.

2. The break up of a former large and complicated "Hub" engineer's extra board at Shreveport has led to greatly reduced demands on young inexperienced engineers and the number of failures and rule infractions has decreased significantly. Morale among young, newly promoted engineers has improved as a direct result.

National Railroad Passenger Corporation (Amtrak)

Cultural Transformation

1. The joint FRA/Amtrak labor/management/Volpe National Transportation Systems Center (Volpe) pilot project, with partial funding by FRA's Office of Railroad Development (RDV), to improve Amtrak's safety culture through the consolidation of eight outdated safety rule books into one safety rule book commenced with Volpe-conducted baseline measurements in Boston, Massachusetts, Chicago, Illinois, and Los Angeles, California. Measurements included safety surveys, safety practice observations, focus groups, and injury rate analysis. The working committee tasked with the actual rule book consolidation consists of representatives from labor, management, and FRA. Subsequent to issuance of the consolidated rule book, Volpe will return to conduct follow-up safety culture measurements to document outcomes initiated by the new consolidated rule book and its associated practices and processes. FRA envisions that the entire project, from baseline measurements through rule book consolidation to follow-up measurements, will initiate fundamental improvements in Amtrak's safety culture, further strengthen the Amtrak SACP cooperative safety process, and lead to further safety culture improvements.

2. Encouraged by the success of the Amtrak West SACP Committee, FRA worked with Amtrak Intercity to help establish a similar joint labor/management/FRA safety partnership committee, consisting of eastern and western working groups, for Intercity operations. Amtrak labor, in discussion with FRA, recently proposed an initiative to institutionalize the SACP process through formal recognition of six existing safety committees—the three Amtrak NEC System Safety Working Groups, Massachusetts Bay Transportation Authority, Amtrak Intercity, and Amtrak West—as SACP committees with labor appointees and FRA representatives. The six SACP committees would address unresolved safety issues submitted by local safety committees. Issues not resolved by the SACP committees would be sent to the Joint Labor/Management Safety Council for ultimate resolution.

SACP Process Improvements and Audit Results

1. The three joint Amtrak labor/management/FRA High Speed System Safety Working Groups (representing the New England Division, Metropolitan Division, and Mid-Atlantic Division), and tasked with the safe integration of Amtrak's high speed train service into its existing service, have effectively employed the operational hazard analysis process to identify, evaluate, and resolve safety issues. Employing a probability/severity matrix to evaluate immediacy, the three working groups addressed such issues as compromised wayside signal preview, cab signal anomalies, and critical safety information management, to name just a few. Successes have included the relocation of wayside signals and the installation of LED arrays to improve signal preview, significant reduction in cab signal anomalies, consolidation of the Metro-North Temporary Speed Restriction Bulletins (TSRBs), and a uniform format for Amtrak's New England Division, Metropolitan Division, and Mid-Atlantic Division TSRBs.

   With the establishment of several partnership initiatives and the completion of the follow-up audit, the finite audit-style SACP has evolved into an ongoing partnership-style SACP.

2. Partnership meetings involving FRA, Amtrak, Long Island Rail Road, the American Train Dispatching Division (ATDD), and the Transportation Communications Union, provided a forum to raise, address, and resolve safety and work issues related to New York City's Claytor/Scannell Penn Station Control Center.

3. An FRA SACP partnership with Amtrak labor and management is preventing serious injuries and accidents to roadway workers associated with the Northeast Corridor (NEC) Electrification Project. This project has helped hasten the advent of high speed train service in the NEC.

4. Following an FRA SACP audit, the agency assisted Amtrak with the development of a safety action plan to address hazardous materials (HM) documentation and training concerns associated with Amtrak's mail and express service. The safety action plan includes systemwide HM training and joint FRA/Amtrak monitoring. Due to the carrier's increasing numbers of HM shipments, FRA has recommended the appointment of an Amtrak HM expert with accountability for compliance with federal HM regulations.

5. A joint FRA/Amtrak/BLE SACP project investigated allegations of ineffective air brake applications on Talgo trains in the Pacific Northwest. The installation of a modified wheel slip/slide computer program has resulted in decreased stopping distances.

Training Improvements

1. FRA inspectors from Regions 1 and 2 have received Amtrak-conducted training on high speed train (Acela and high horsepower locomotive) mechanical systems. The training will enable FRA to become an effective partner with Amtrak management and labor to ensure safe high speed train operation.

2. FRA personnel have participated in Amtrak-conducted Advanced Civil Speed Enforcement System (ACSES) training and are currently monitoring Amtrak's ACSES testing between New Haven, Connecticut, and Boston, Massachusetts.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing, and Crew Utilization

1. The FRA/Amtrak SACP team is evaluating locomotive engineer fatigue issues. Under examination is one-person engineer-in-the-cab operations between midnight and 6:00 a.m. with no supplemental safety features, e.g., automatic train control and cab signals. Options being considered are modified assignments, off-duty napping, education and training, and identification of problem sleepers. While evaluation is underway, Amtrak has agreed to place a second qualified engineer on the 34 identified assignments with a three-hour-or-greater incursion into the midnight to 6:00 a.m. time period, when a second engineer is available.

   FRA's Office of Railroad Development has contracted with Foster-Miller, Incorporated to conduct a fatigue/alertness evaluation of the previously identified 34 Amtrak Intercity locomotive engineer assignments with a three-hour-or-greater incursion into the midnight to 6:00 a.m. time period, with crew assignment optimization as a goal.

Norfolk Southern Railway Corporation (NS)

Cultural Transformation

1. On May 10, 1999, NS issued a joint General Safety Information Bulletin to all employees specifying what is expected of company officers to ensure that employees injured on the job receive prompt and appropriate medical care and are treated with respect. This SACP team effort has had a significant impact in CY 2000 by helping to calm negative employee perception about the railroad's resolve to eliminate harassment and intimidation. It will also improve the accuracy of reporting of railroad incidents.

2. On January 1, 2000, NS implemented the System Teamwork and Responsibility Training (START) program. START procedures were negotiated between NS management, the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE). The START program will involve union officials in the disciplinary process and will rely on alternative training rather than disciplinary hearings for minor rules infractions. It also eliminates formal disciplinary hearings for employees who sustain injuries. Unions have argued that this practice discouraged the reporting of incidents, which in turn may under-report results for safety records. START covers the 12,800 train and engine employees represented by the UTU and the BLE.

3. On October 31, 2000, the NS took a meaningful step toward the reduction of employee injuries and train accidents by implementing an NS/FRA/UTU/BLE SOFA committee. The committee reviewed employee injuries and human-factors/rail-equipment-related accidents and incidents and developed an action plan based on the findings. The first phase involved the FRA review of the NS reportable employee injuries and rail equipment accidents followed by an FRA/NS review of all accountable employee injuries and rail equipment incidents. Based on the data, the selection of a division pilot project was made. The full committee has been meeting to review the documentation and to develop an action plan. After a committee review of the pilot project results, the program will be expanded to all divisions.

SACP Process Improvements and Audit Results

Accident/Injury Prevention Programs

1. The Fatality Analysis Team conducted an analysis of two incidents that resulted in employee fatalities in order to determine the root cause(s) and appropriate remedial action. The analysis included a candid exploration of all policies and work practices that may have contributed to this accident. The team developed and implemented detailed safety action plans to prevent similar incidents in the future.

2. In January 2000, the SACP team proposed changes in railroad operating practices that would prevent a fatality like that of an NS machinist on November 4, 1999. He was struck by a train moving on an adjacent track to the one on which the locomotives he was inspecting/servicing were located. Because of the circumstances surrounding this incident and the importance of teamwork and understanding among all participants in a

task, this SACP team is composed of representatives from both operating and non-operating crafts, i.e., UTU, BLE, BRC, IAM, IBEW, as well as NS and FRA.

3. The NS Safety Profile Report of safety issues identified during the SACP assessment was forwarded to the appropriate labor organizations for their review. With one exception, FRA accepted NS responses to the 41 findings and recommendations. FRA met with NS and each rail labor organization that participated in the SACP to formulate remedial action. All parties agreed to continue the partnership efforts to resolve significant issues.

Training Improvements

1. The new SACP-collaborated conductor training program has improved crew utilization, reduced employee fatigue, and improved the safe movement of trains. The hiring process has been streamlined, reducing the time between the initial job applicant interview and the start of training to 30 days or less. The NS also approved a $100/week pay raise for the participants that equates to a 33 percent pay raise for the employees. This action has reduced turnover and attrition.

2. The SACP team produced two educational videos to simulate the hazards associated with switching operations (switchman crushed between the end platforms of two cars when the drawbars bypassed during an attempted coupling) and moving equipment (conductor walking on the tie ends was struck and killed by equipment approaching from behind). Each of the videos comes with a lesson plan and is designed to facilitate employee participation. Labor and management jointly present the material and conduct follow up audits to ensure employee compliance with the safety rules.

3. The Manpower SACP Team developed a mentoring and training program that will significantly improve the ability of crews to effectively resolve safety concerns in a timely manner. The FRA, three NS general chairmen (labor), three senior labor leaders, the NS Vice President for Labor Relations, and other senior NS staff met to finalize the program. Labor is very pleased with this effort.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing, and Crew Utilization

1. The NS revised its Division Superintendents' performance standards to hold them accountable for any train congestion and excess time a crew member must spend on the train awaiting transportation. This action has significantly improved crew utilization, reduced employee fatigue, and improved safety.

Union Pacific Railroad (UP)

Cultural Transformation

The cornerstone of UP's culture transformation continues to be two policies: the Discipline Upgrade, and the Business Conduct Policy/Managerial Review. Both policies reflect a significant culture shift away from punitive action towards education, training, and counseling of employees and managers. Both policies contain a periodic review provision available to all parties.

SACP Process Improvements and Audit Results

Highway-Rail Grade Crossing Initiative

In an effort to further reduce the number of highway-rail grade crossings across the UP system, the UP SACP Oversight Committee has formed a new Grade Crossing Working Group. This group is targeting areas of high-incident occurrences (e.g., trespassers, vehicular accidents, near misses) and multiple highway-rail grade crossings in an effort to upgrade some crossings and eliminate others. In addition, seldom used and poorly located rail-crossings will be targeted for closure. The Grade Crossing Working Group will work with local, city, county, and State governments.

Switching Operation Fatality Analysis (SOFA) Working Group

To enhance the nationwide emphasis on switching operations, a UP SACP formed a new working group to communicate SOFA recommendations throughout the UP system. The group will raise employee awareness of the five SOFA lifesavers.

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing and Crew Utilization

Fatigue Management

The FRA/UP SACP fatigue working group accomplished the following:

1. Developed a fatigue-education/support-orientation program for all employees and their families for work cycles, sleep disorders, fatigue abatement, etc. This program was provided to all employees and families. This information is available via individual mailings, the Internet, UP Informational Television (ITV), manuscripts, Session B training (Core Fatigue Management Training), and VHS educational videos.

2. Through October 2000, 170 work/rest agreements (scheduled work days/guaranteed rest days) have been negotiated. Of those, 104 are implemented and 36 were near implementation. An additional 30 were in various stages of ratification. These agreements, negotiated or pending ratification for train and engine men, represent approximately one-third of the total number of agreements that exist on the UP. The newly formed predictability sub-working group continues to analyze and develop methodologies specific to crew work/rest cycles.

3. The fatigue working group has developed and mailed to all operating employees a "critique" survey sheet in an effort to better evaluate the lodging facilities across the UP system. Currently, the group is reviewing UP-owned lodging facilities, based on survey comments. The lodging sub-working group developed, presented, and adopted a system-wide, 5-year, lodging-upgrade action plan.

Dispatcher workload

FRA and the UP SACP workload team continue to monitor the train dispatching workloads at the Union Pacific Harriman Dispatching Center and satellite dispatching centers across the system. Monitoring reports as early as 1997 indicated train dispatcher fatigue, an overly burdened dispatching position, and the need for an improved training program to address the large number of newly hired train dispatchers. To date, many SACP recommendations have been incorporated, which have increased operational safety related to dispatching operations.

Inspection and Testing Working Groups

1. The Car and Locomotive SACP working groups: developed a long-term safety action plans to identify and correct equipment defects; and developed a video that addresses daily inspection requirements for cars and locomotives.

2. The Track SACP working group group developed the criteria for machine-operator qualifications and certification to ensure the proper training and safe operation of both wayside and on-track equipment.

3. The Signal SACP working group has reduced the occurrences of signal "activation failures" and "false proceed indication" caused by human factors, design errors, and maintenance practices.

III. Appendix - Details for Class II Railroads

Dakota, Minnesota and Eastern Railroad Corporation (DME)

Cultural Transformation

Active and successful partnerships have been formed involving all crafts and management which has reduced safety complaints submitted to FRA to insignificant levels.

SACP Process Improvements and Audit Results

Accident/Injury Prevention Programs

1. Following an FRA/DME SACP safety audit, FRA requested improvements and resolution to 75 problems related to safety, including:

   - The train dispatcher's manual was updated, eliminating the inconsistency in the application of the track warrant rules and noncompliance with operating rules.

   - A system wide mechanical yearly inspection program of all maintenance-of-way cars was implemented and a plan to repair all defects was adopted.

   - Management implemented FRA's recommendation to discontinue the use of a remotely controlled switch in Rapid City, SD. The remote control operation of this type of switch on main tracks is a nation-wide FRA concern and is under review. Employees were concerned that the hydraulic switch could be remotely operated by radio from a distant location which could possibly derail or divert an approaching train.

   - Track warrant procedures were amended for roadway workers, to not allow a dispatcher to give joint occupancy with other roadway workers or trains.

Training Improvements

Formal training on safe procedures for the jacking of freight cars was performed across the entire system for carmen involved in that practice.

IV. Appendix - Headquarters and Regional Offices Points of Contact

Office of Safety Headquarters

Office of Safety - Plans, organizes, coordinates and administers railroad safety practices in the railroad industry and states. Promotes the safety of railroads through the enforcement of Federal laws and related regulations.

Associate Administrator for Safety	Gavalla, George A	(202) 493-6300
Deputy Associate Administrator (Safety Compliance & Prog. Implementation	Logue, Michael J	(202) 493-6301
Deputy Associate Administrator (Safety Standards and Program Development)	Cothen, Grady	(202) 493-6302
SACP Coordinator	Kaye, Scott	(202) 493-6303
RSAC Coordinator	Leeds, Lydia	(202) 493-6213
RSAC Coordinator	Paolella, Patricia	(202) 493-6212
Executive Advisor	Pritchard, Edward	(202) 493-6247
Accident Reporting and Analysis	Gray, Arnold	(202) 493-6209
Accident Reporting and Analysis	Ramos, Lonnie	(202) 493-6214
Railroad Security Accident Reporting & Analysis	Secrest, Curt	(202) 493-6215
Acting Director, Office of Safety Assurance and Compliance	Edward Pritchard	(202) 493-6247
Director, Office of Safety Analysis	John Leeds	(202) 493-6206

Project Coordinators/ProgramManagers/Assistant Program Managers - Management and resolution of SACP initiatives. Performs special studies to improve safety on assigned railroad.

Project Coordinators:

Rail Labor/Management & Facilitator - Region 2	DeEmilio, Michael	(610) 521-8214
Rail Labor/Management & Facilitator - Region 2	Phelan, James	(412) 967-5642

Program Managers:

Amtrak	- Region 1 - Cambridge, MA	Fiorenzo, Les	(617) 494-3484
NS	- Region 2 - Philadelphia, PA	Lutton, Ronald	(610) 521-8200
CSX	- Region 3 - Jacksonville, FL	Lydick, Joe	(904) 284-9870
BNSF	- Region 5 - Hurst, TX	Green, David	(817) 284-8142
UP	- Region 6 - Kansas City, MO	Kutch, Ric	(816) 329-3849

Assistant Program Managers:

BNSF	- Region 5 - Hurst, TX	Hardesty, Merlyn	(817) 284-8142
UP	- Region 6 - Kansas City, MO	Lanman, Kenneth	(816) 329-3848

Quality of Life Issues: Fatigue Management and Improvements in Manpower, Staffing and Crew Utilization

The DME has implemented three programs which focus on "quality of life" issues and "fatigue mitigation" for trainmen. The first program allows 12 hours of undisturbed rest, plus 2 hours advance notice, if they are needed to return to work. The second program allows employees to start shift work at 8 a.m. after being off for an extended period of time, such as vacation. The third program implemented in Huron, SD and waiting approval of trainmen in Waseca, MN allows employees 3 days off after working 12 days.

Fatigue Program Coordinator

Region 5 - Hurst, TX	Sorah, Jay	(817) 490-0189

Office of Safety Regional Offices

Regional Administrators - Regional Operations, Programs, and Personnel

Region 1 - Cambridge, MA	McKeon, Mark	(617) 494-3572
Region 2 - Philadelphia, PA	Myers, David	(610) 521-8210
Region 3 - Atlanta, GA	Dennin, Fred	(404) 562-3803
Region 4 - Chicago, IL	Hasvold, Laurence.	(312) 353-6203
Region 5 - Hurst, TX	Megary, John	(817) 284-8142
Region 6 - Kansas, MO	Tisor, Darrell	(816) 329-3852
Region 7 - Sacramento, CA	Settje, Alvin	(916) 498-6540
Region 8 - Vancouver, WA	Clairmont, Dick	(360) 696-7536

Deputy Regional Administrators - Regional Headquarters & Field Operations, Personnel Management, Accidents/Incidents, Waivers, Complaints, and Controlled Correspondence Assigned to Region

Region 1 - Cambridge, MA	Fiorenzo, Les	(617) 494-3484
Region 1 - Cambridge, MA	Hontz, Brian	(617) 494-2243
Region 2 - Philadelphia, PA	Appleton, Marina	(610) 521-8216
Region 2 - Philadelphia, PA	Buckley, Daniel	(610) 521-8214
Region 3 - Atlanta, GA	Smith, Leon	(404) 562-3806
Region 3 - Atlanta, GA	Clune, Christopher.	(404) 562-3809
Region 4 - Chicago, IL	Blackmore, David.	(312) 353-6203
Region 4 - Chicago, IL	Little, Levoy	(312) 353-6203
Region 5 - Hurst, TX	Sapp, Leon	(817) 284-8142
Region 5 - Hurst, TX	Elston, Ralph	(817) 284-8142
Region 6 - Kansas, MO	Ellis, Peggy	(816) 329-3850
Region 6 - Kansas, MO	McFarlin, Tom	(816) 329-3851
Region 7 - Sacramento, CA	Brooks, David	(916) 498-6548
Region 7 - Sacramento, CA	Fedora, Michael	(916) 414-2323
Region 8 - Vancouver, WA	Sanders, Mike	(360) 696-7536
Region 8 - Vancouver, WA	Jacobs, Hank	(360) 696-7536

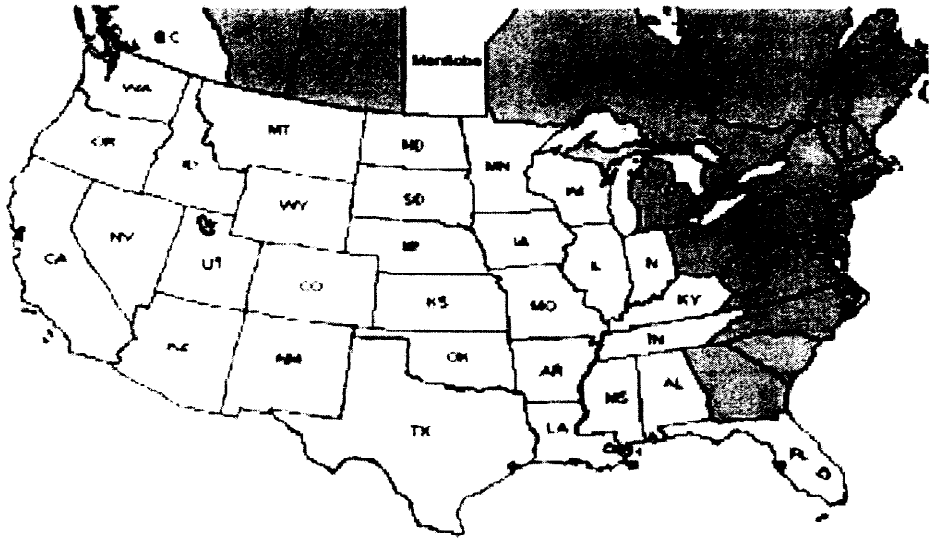
BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY (BNSF)
(Wholly owned subsidiary of Burlington Northern Santa Fe Corp.)

Executive Office: 2650 Lou Menk Drive
Fort Worth, TX 76161
(817) 878-2000

Executive Officers:

- Chairman: Robert D. Krebs
- President & CEO: Matthew K. Rose
- Exec. VP, COO: Carl R. Ice

States and Canada Served:



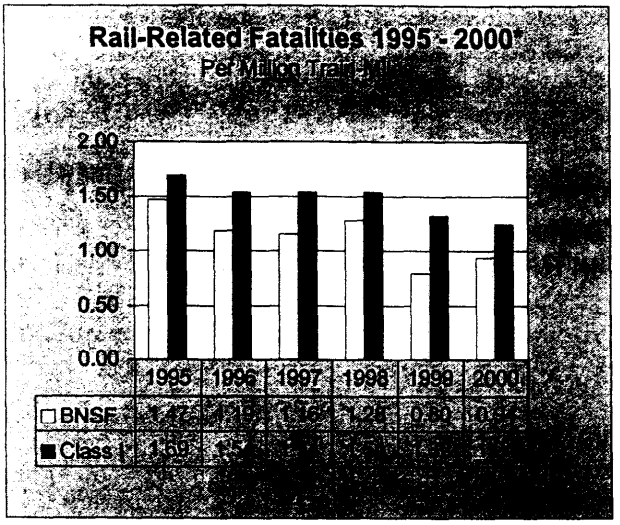
Railroad Profile:

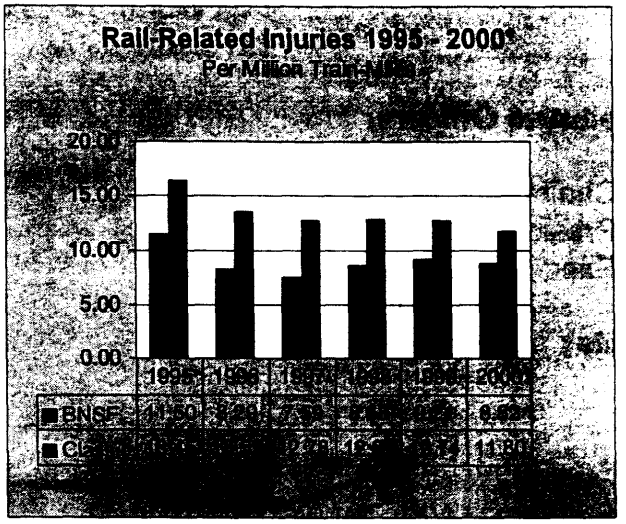
No. of Employees (Avg):	42,659
Miles of Road Operated:	33,264 covering 29 States and Canada
Traffic (Key Commodities):	Coal, Grain, Chemicals, Food, Metallic Ores

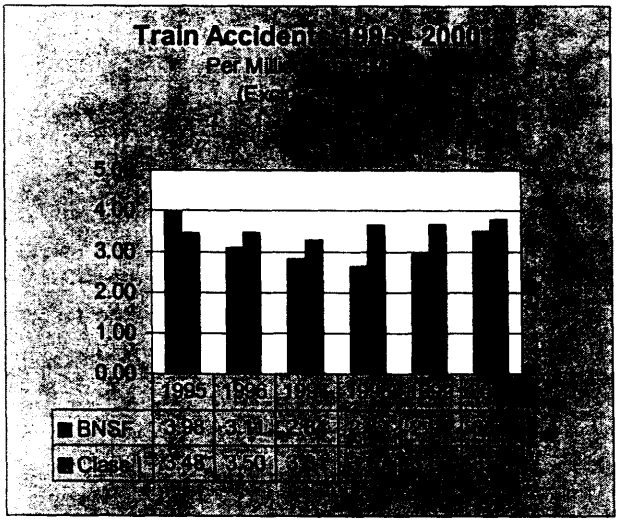
Financial and Operating Information ($ In Millions) - 1999:

Total Assets ($)	23,784.3	Employee Hours (000)	111,361
Total Liabilities ($)	14,325.0	Train Miles	146,097,909
Net Shareholders' Eq ($)	9,459.3	Switching Hours (Freight)	2,585,235
Operating Revenues ($)	9,094.5	Rev Ton-Miles (b)	487.8
Operating Expenses ($)	6,891.5	Freight Car-Miles (000)	8,989,941
Current Ratio	0.5	Locomotive Miles	466,583,634
Net Rev From Operations	2,203.0	Locomotives	5,134
Debt/Equity Ratio	44.13%	Freight Cars In Service	98,559
MOW/Rev $	14.24%		

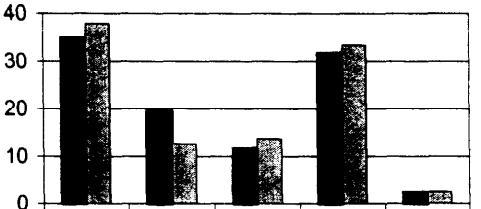
Burlington Northern Santa Fe Railway Company
Safety Performance



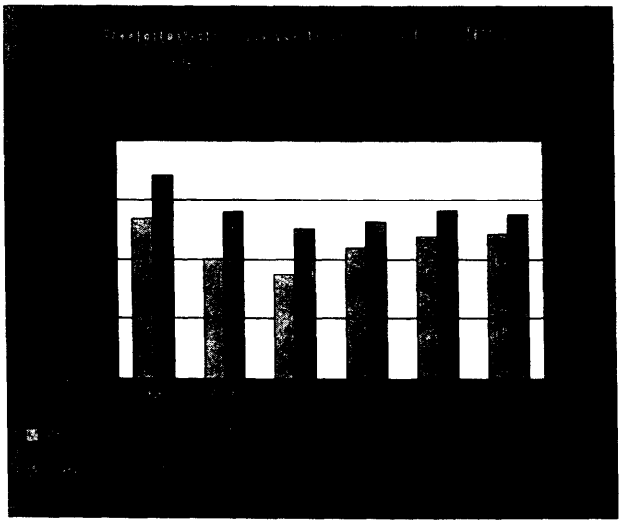




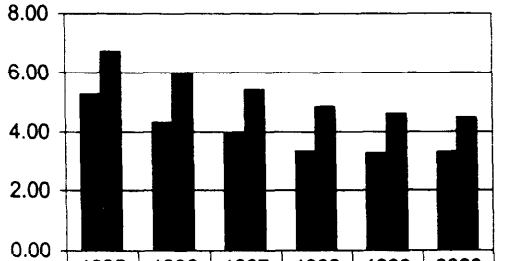
Accidents By Cause - 2000*
% of Accidents



	HF	EQUIP	MISC	TRACK	SIGNAL
BNSF	35.0	19.5	11.5	31.7	2.3
Class I	37.9	12.6	13.7	33.4	2.4



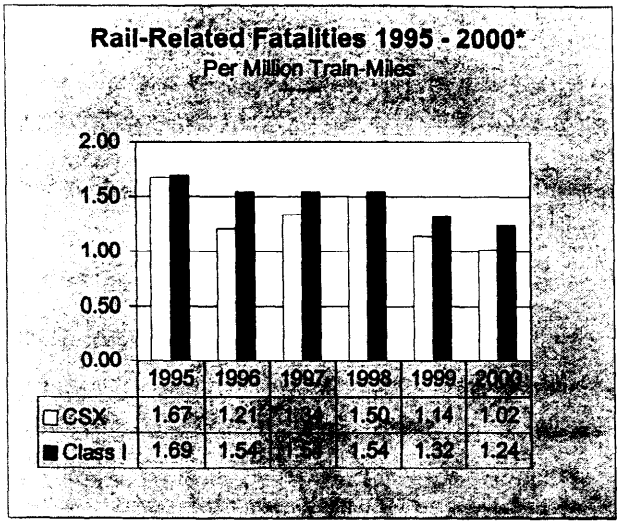
Grade Crossing Collisions 1995 - 2000*
Per Million Train-Miles

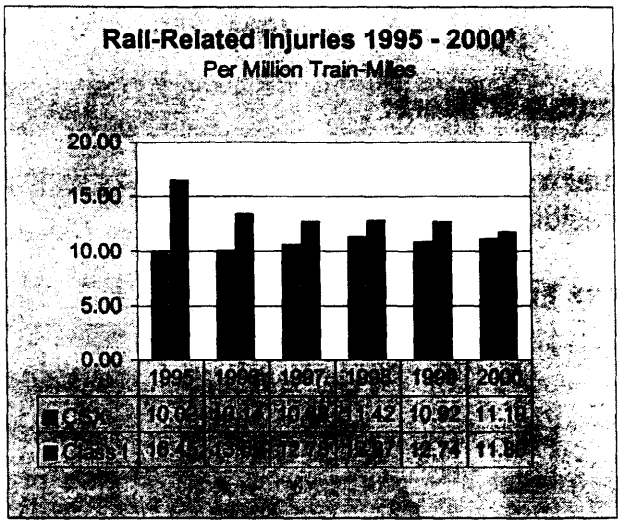


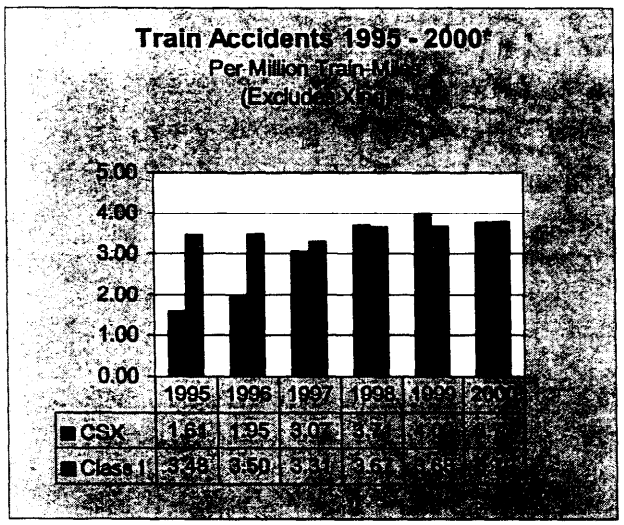
	1995	1996	1997	1998	1999	2000
BNSF	5.29	4.33	3.95	3.33	3.25	3.31
Class I	6.70	5.99	5.42	4.87	4.61	4.47

*Year 2000 data is preliminary

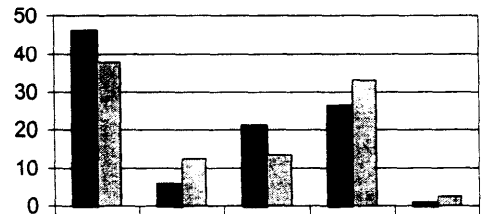
CSX Transportation, Inc.
Safety Performance



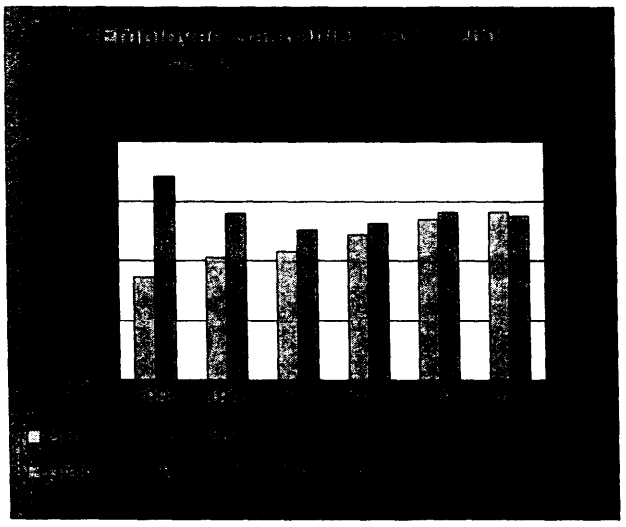




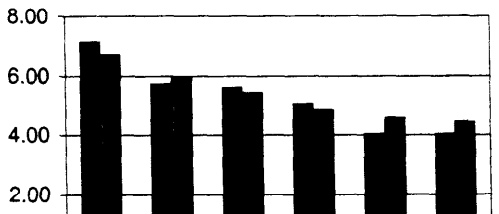
Accidents By Cause - 2000*
% of Accidents



	HF	EQUIP	MISC	TRACK	SIGNAL
CSX	46.1	5.8	21.1	26.4	0.7
Class I	37.9	12.6	13.7	33.4	2.4



Grade Crossing Collisions 1995 - 2000*
Per Million Train-Miles



	1995	1996	1997	1998	1999	2000
CSX	7.16	5.76	5.60	5.05	4.04	4.03
Class I	6.70	5.99	5.42	4.87	4.61	4.47

*Year 2000 data is preliminary

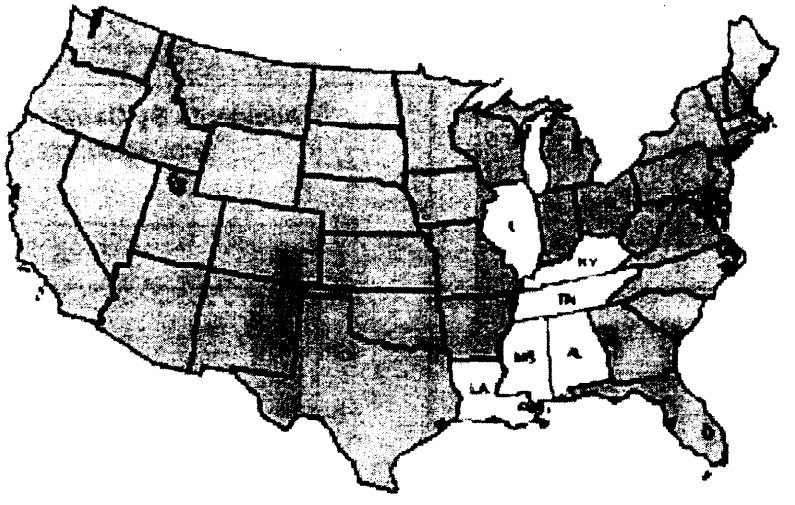
ILLINOIS CENTRAL RAILROAD COMPANY (IC)
(Merged with Canadian National)

Executive Office: NBC Tower
455 N. Cityfront Plaza Drive
Chicago, IL 60611
(312) 755-7500

Executive Officers:

- President & CEO, Canadian National: Paul M. Tellier
- Exec. VP & COO, Canadian National: E. Hunter Harrison

States Served:



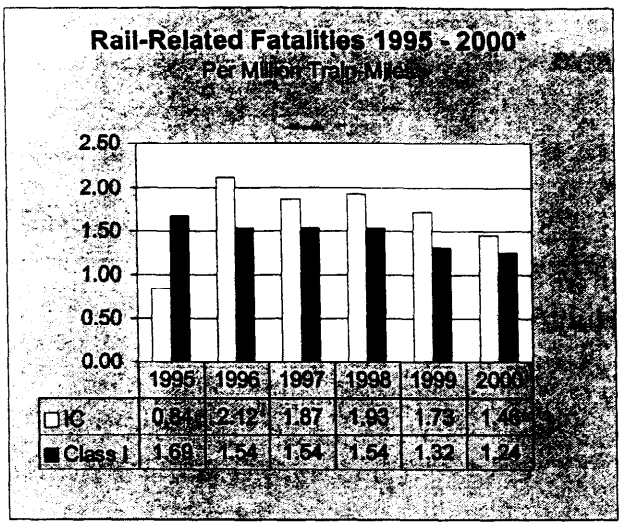
Railroad Profile:

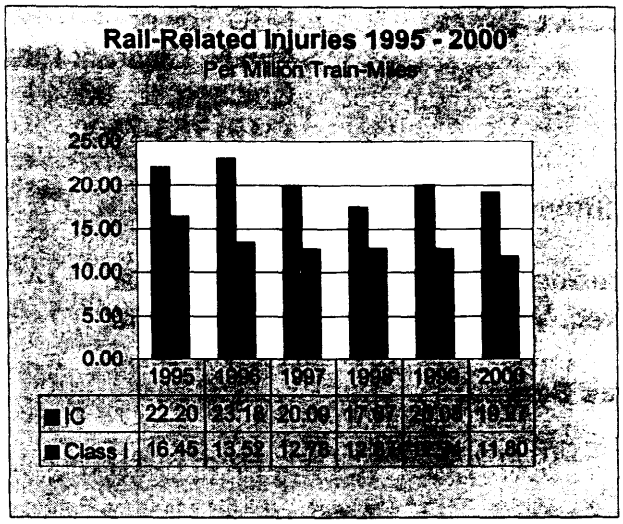
No. of Employees (Avg):	2,796
Miles of Road Operated:	2,591 covering 6 States
Traffic (Key Commodities):	Coal, Chemicals, Grain, Grain Mill Products, Paper

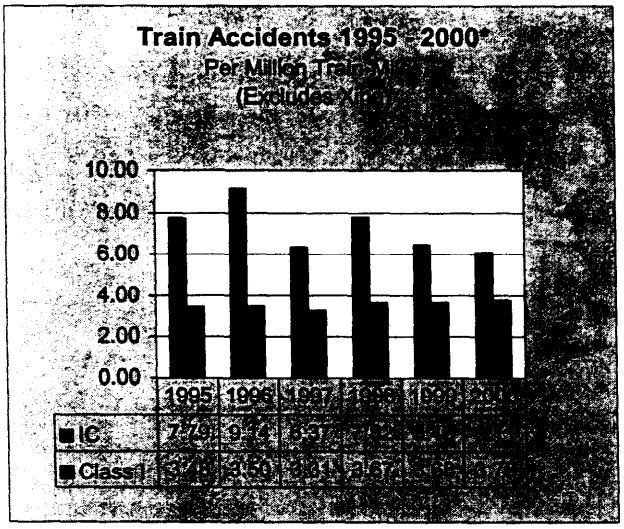
Financial and Operating Information ($ In Millions) - 1999:

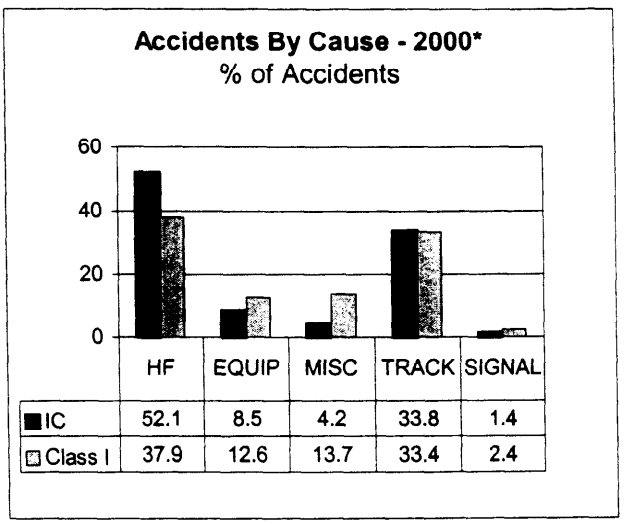
Total Assets ($)	1,954.8	Employee Hours (000)	8,171
Total Liabilities ($)	1,879.9	Train Miles	8,031,251
Net Shareholders' Eq ($)	74.9	Switching Hours (Freight)	250,869
Operating Revenues ($)	670.6	Rev Ton-Miles (b)	24.7
Operating Expenses ($)	529.3	Freight Car-Miles (000)	558,256
Current Ratio	0.8	Locomotive Miles	19,517,355
Net Rev From Operations	141.2	Locomotives	323
Debt/Equity Ratio	1455.54%	Freight Cars In Service	15,109
MOW/Rev $	8.02%		

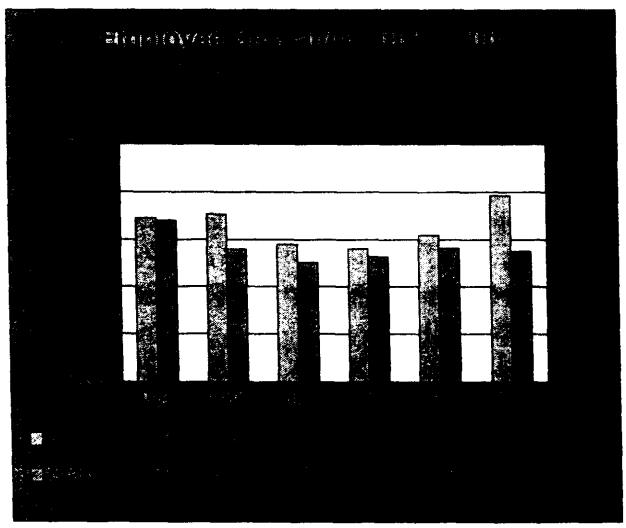
Illinois Central Railroad Company
Safety Performance

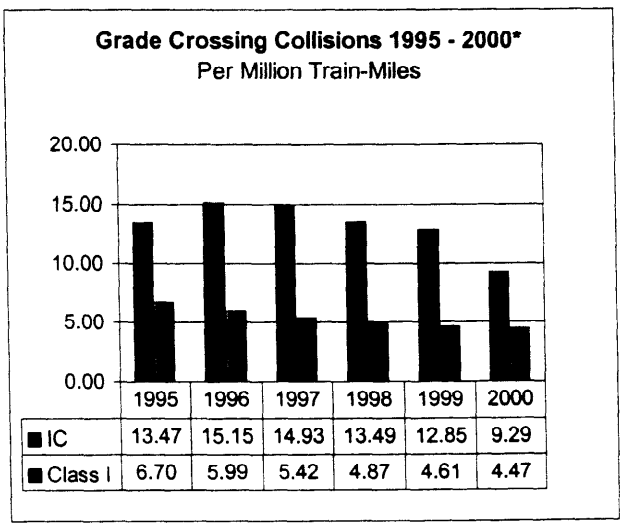












*Year 2000 data is preliminary

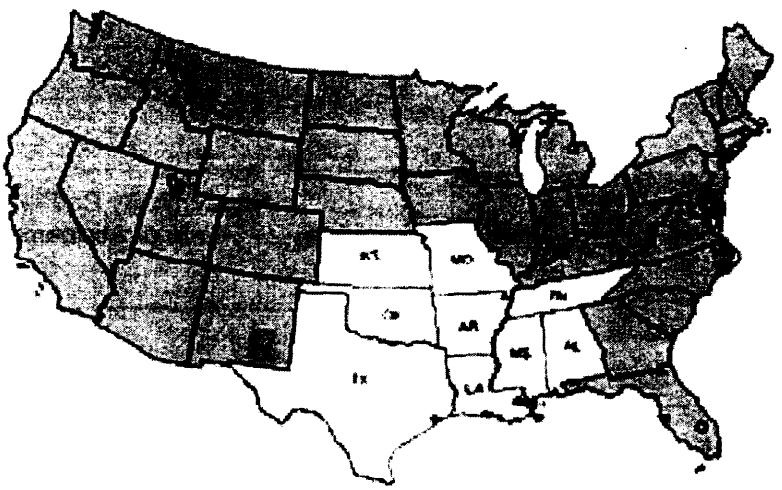
KANSAS CITY SOUTHERN RAILWAY COMPANY (KCS)

Executive Office: 114 W. 11th Street
Kansas City, MO 64105
(816) 983-1303

Executive Officers:

- President & Chief Executive Officer: Michael R. Haverty
- Exec. VP & COO: Gerald K. Davies
- Senior Vice President & Chief Financial Officer: R. H. Berry

States Served:



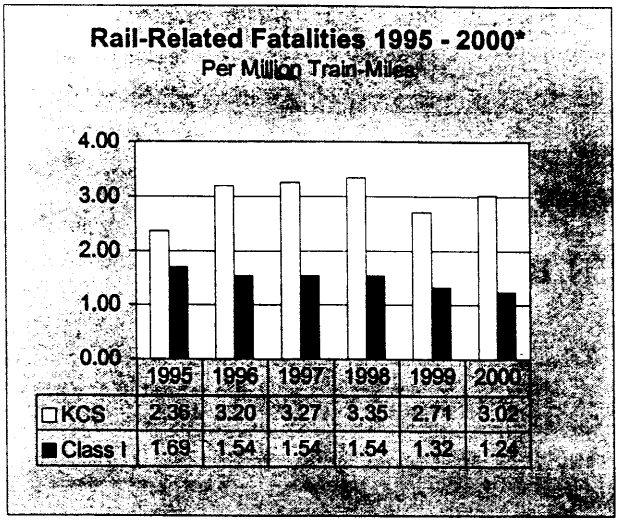
Railroad Profile:

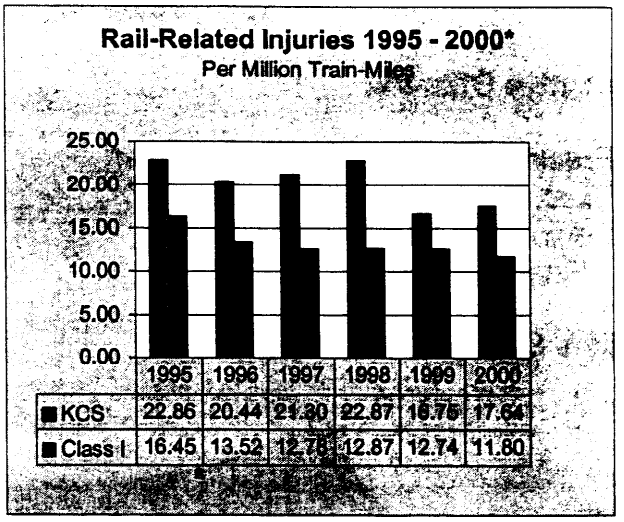
No. of Employees (Avg):	2,640
Miles of Road Operated:	2,756 covering 9 States
Traffic (Key Commodities):	Paper, Chemicals, Primary Forest, Grain, Fuels

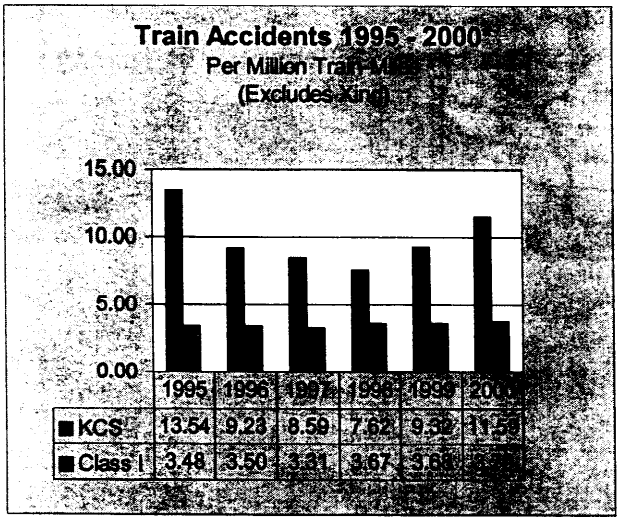
Financial and Operating Information ($ In Millions) - 1999:

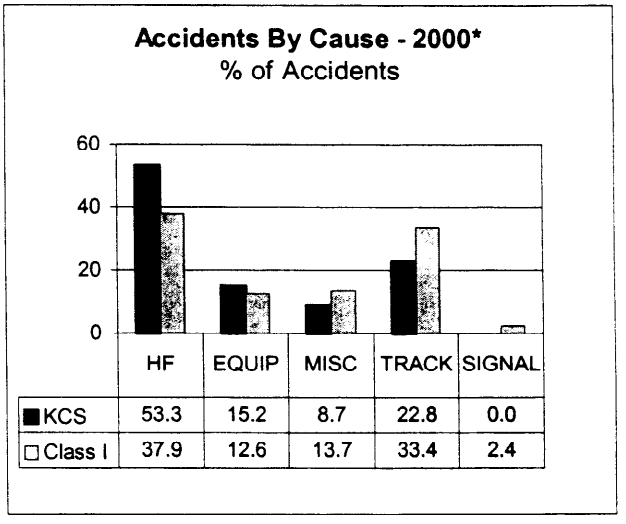
Total Assets ($)	1,412.3	Employee Hours (000)	6,784
Total Liabilities ($)	1006.6	Train Miles	7,306,370
Net Shareholders' Eq ($)	405.6	Switching Hours (Freight)	196,069
Operating Revenues ($)	544.8	Rev Ton-Miles (b)	22.2
Operating Expenses ($)	473.8	Freight Car-Miles (000)	492,070
Current Ratio	0.8	Locomotive Miles	20,886,395
Net Rev From Operations	71.0	Locomotives	495
Debt/Equity Ratio	111.64%	Freight Cars In Service	15,349
MOW/Rev $	16.59%		

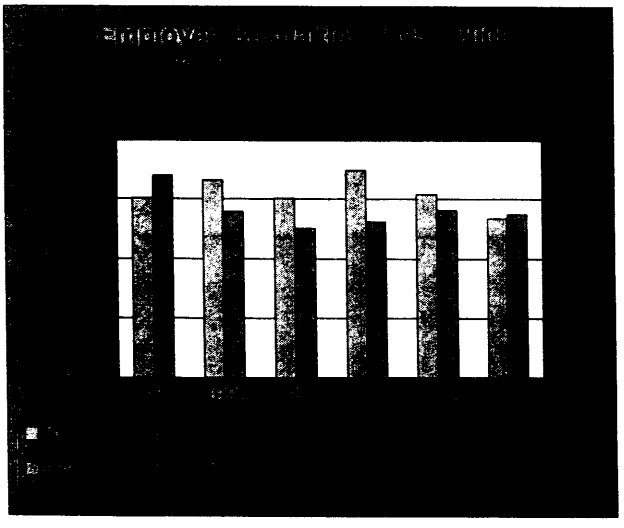
Kansas City Southern Railway Company
Safety Performance

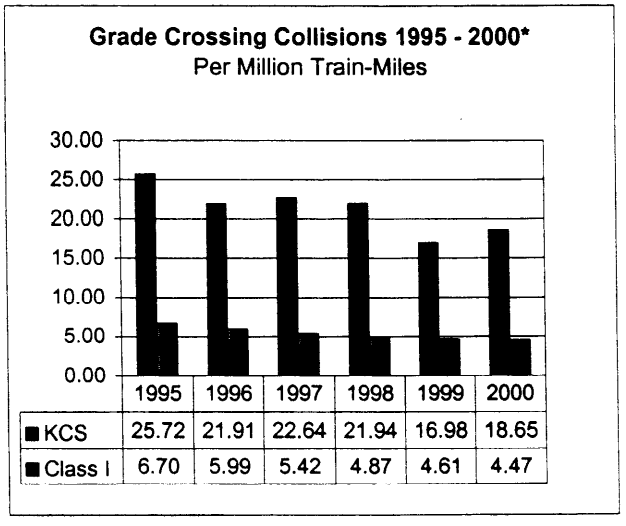












*Year 2000 data is preliminary

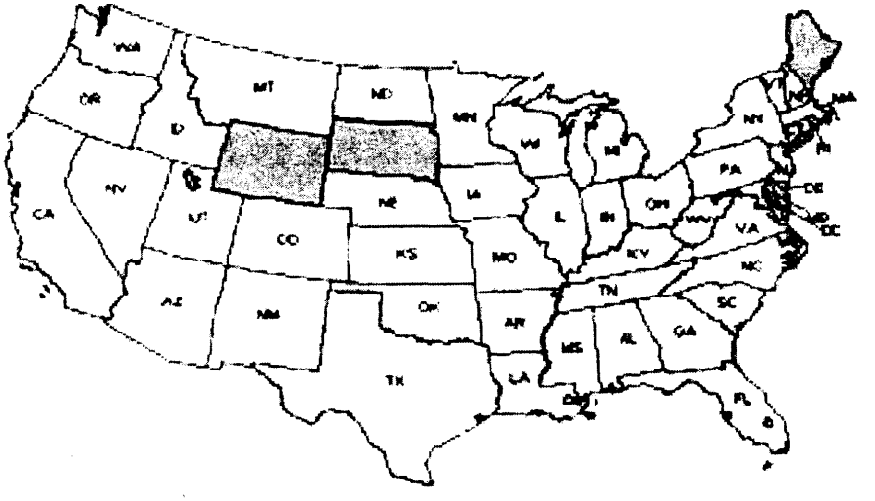
NATIONAL RAILROAD PASSENGER CORPORATION (ATK)

Executive Office: 60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 906-3000

Executive Officers:

▸ President & CEO:	George D. Warrington
▸ Chief Financial Officer:	Arlene Friner
▸ President, NEC Operations:	E. S. Bagley, Jr.
▸ VP - Service Standards:	Ann Hoey
▸ President, Intercity Operations:	Ed Walker
▸ President, West Operations:	Gilbert O. Mallery

States Served:



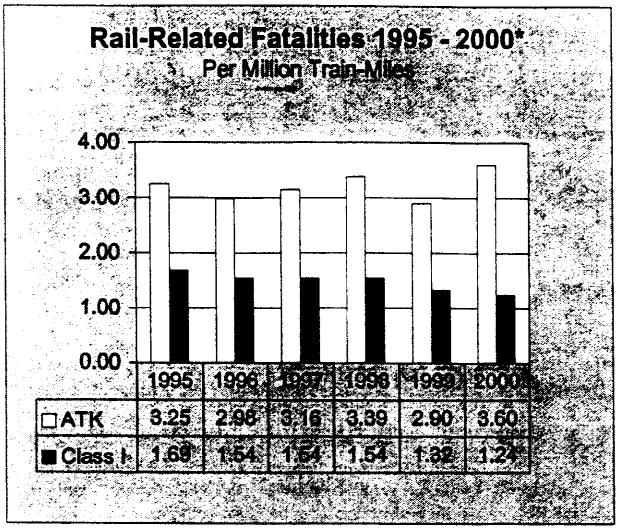
Railroad Profile:

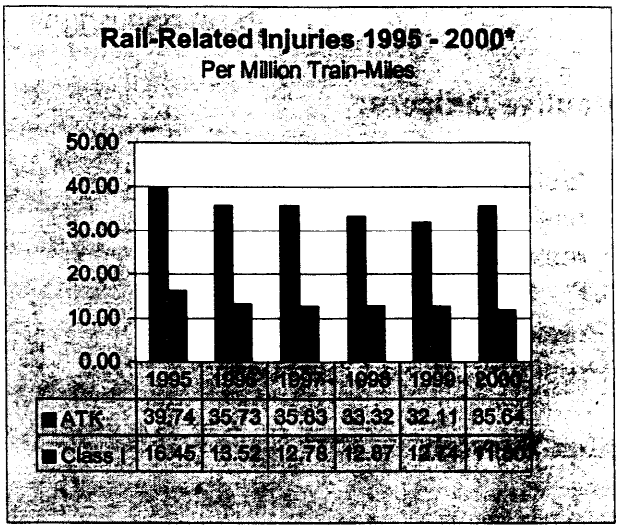
No. of Employees (Avg):	24,979
Miles of Road Operated:	23,000 covering 45 States and D.C.
Ridership:	21.5 mill intercity riders & 58.3 mill commuters; served 510 stations.

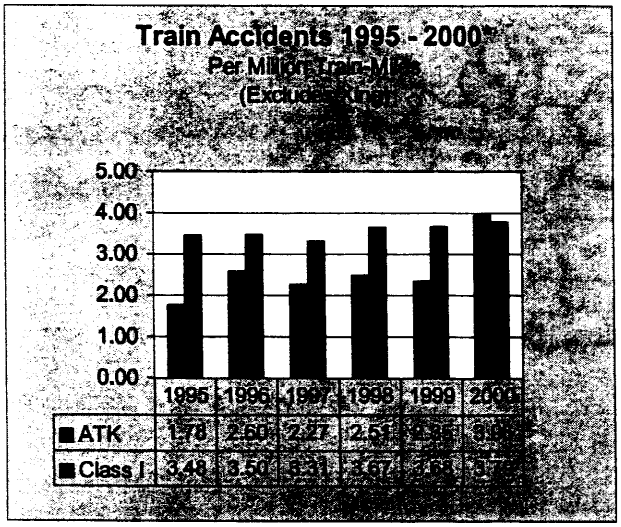
Financial and Operating Information ($ In Millions) - 1999:

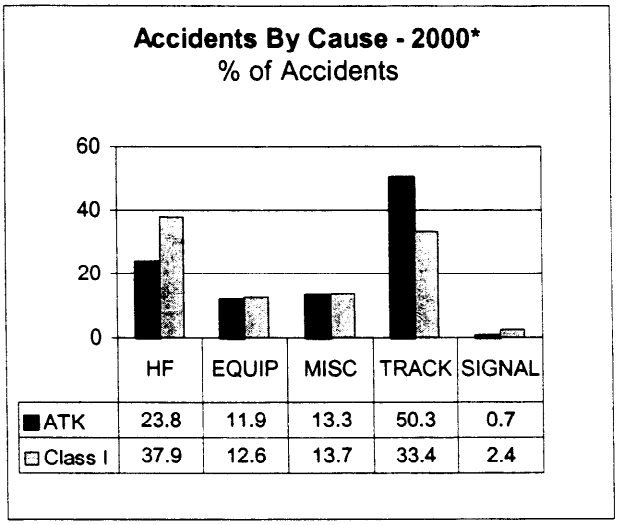
Total Assets ($)	8,095.0	Employee Hours	56,306,916
Total Liabilities ($)	3,487.3	Train Miles	33,806,000
Net Shareholders' Eq ($)	4,607.7	Passenger Miles (m	5,330
Current Ratio	1.49	Seat Miles (m)	12,064
Total Revenues ($)	2,042.3	Load Factor	4.2%
Total Expenses ($)	2,744.5	(Pass Miles/Seat Miles)	
Operating Income (Or Loss)$	(702.2)	Active Fleet (# of Cars)	1,992
Capital Structure (Debt %)	22.1		

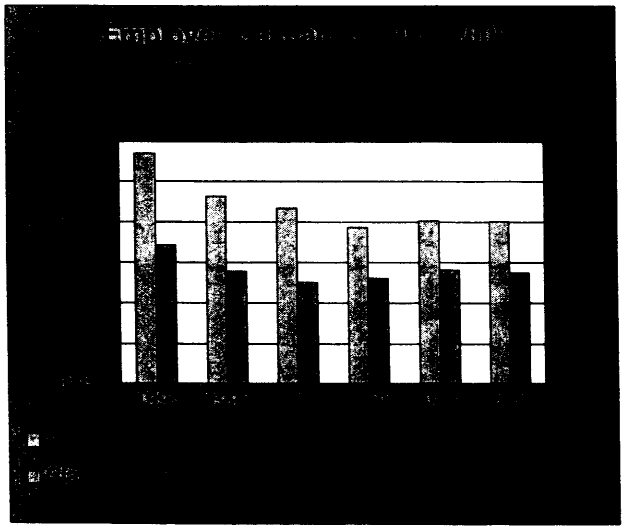
Amtrak
Safety Performance

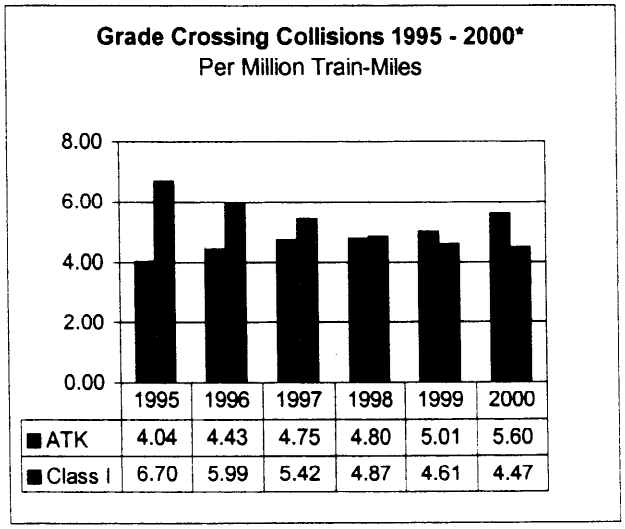












*Year 2000 data is preliminary

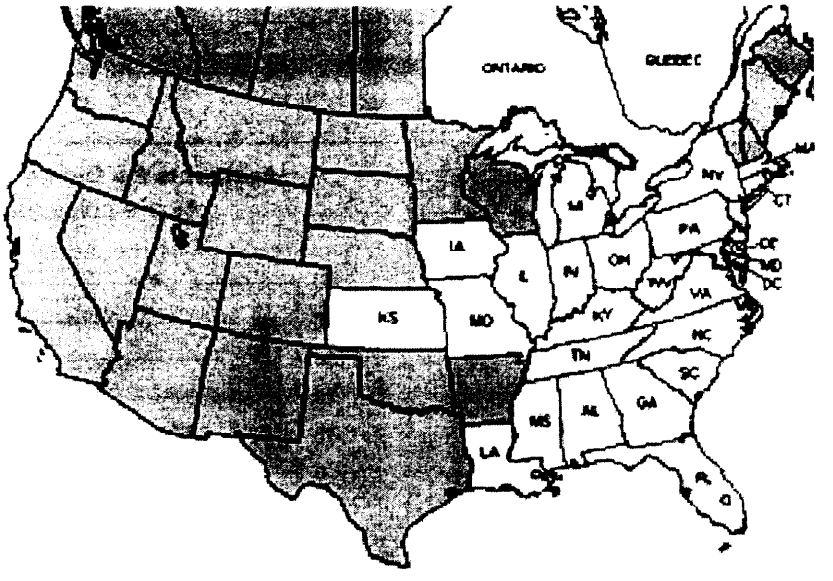
NORFOLK SOUTHERN CORPORATION (NS)

Executive Office: Three Commercial Place
Norfolk, VA 23510-9227
(757) 629-2600

Executive Officers:

- Chairman, President & CEO: David R. Goode
- Vice Chairman & COO: Stephen C. Tobias
- V. P. - Safety & Environmental: Charles Wehrmeister

States and Canada Served:



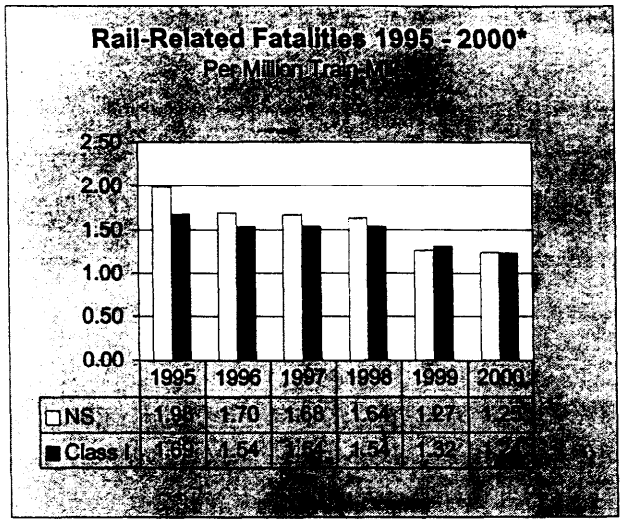
Railroad Profile:

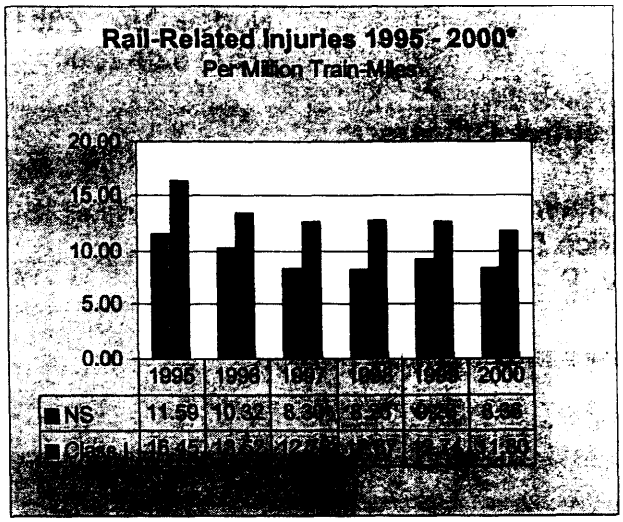
No. of Employees (Avg):	30,897
Miles of Road Operated:	21,788 covering 23 States, D.C. and Canada
Traffic (Key Commodities):	Coal, Motor Vehicles, Metals, Chemicals, Grain

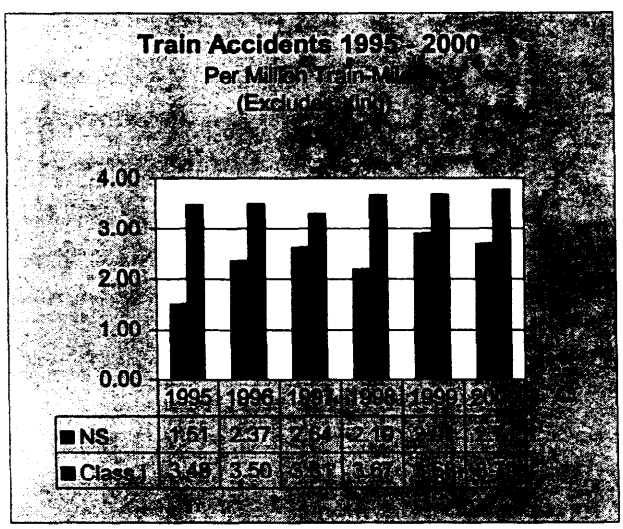
Financial and Operating Information ($ In Millions) - 1999:

Total Assets ($)	12,812.2	Employee Hours (000)	73,581
Total Liabilities ($)	7,535.6	Train Miles	61,503,285
Net Shareholders' Eq ($)	5,276.6	Switching Hours (Freight)	3,257,140
Operating Revenues ($)	5,194.6	Rev Ton-Miles (b)	165.5
Operating Expenses ($)	4,695.9	Freight Car-Miles (000)	4,028,656
Current Ratio	0.6	Locomotive Miles	182,803,088
Net Rev From Operations	498.6	Locomotives	3,399
Debt/Equity Ratio	18.35%	Freight Cars In Service	117,042
MOW/Rev $	18.26%		

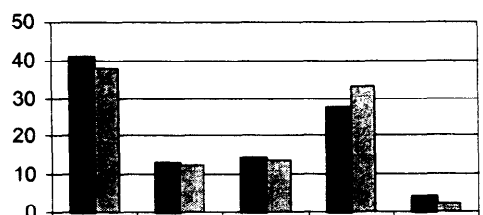
Norfolk Southern Corporation
Safety Performance



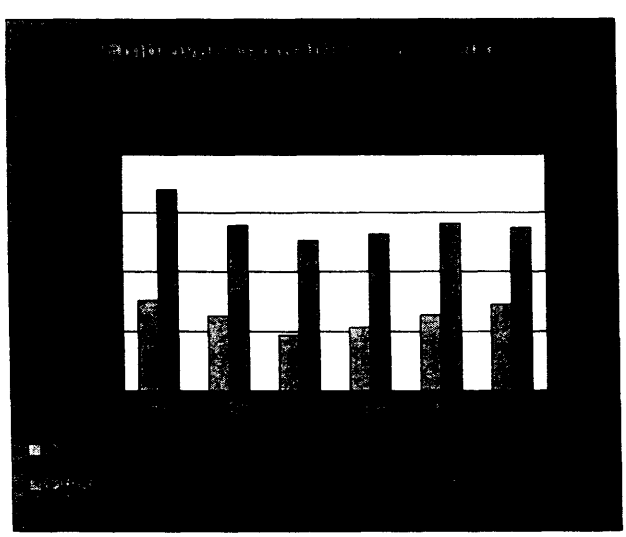




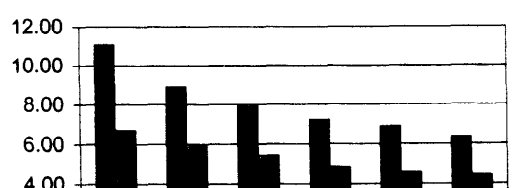
Accidents By Cause - 2000*
% of Accidents



	HF	EQUIP	MISC	TRACK	SIGNAL
NS	41.0	13.1	14.3	27.5	4.0
Class I	37.9	12.6	13.7	33.4	2.4



Grade Crossing Collisions 1995 - 2000*
Per Million Train-Miles



	1995	1996	1997	1998	1999	2000
NS	11.10	8.92	7.90	7.23	6.90	6.33
Class I	6.70	5.99	5.42	4.87	4.61	4.47

*Year 2000 data is preliminary

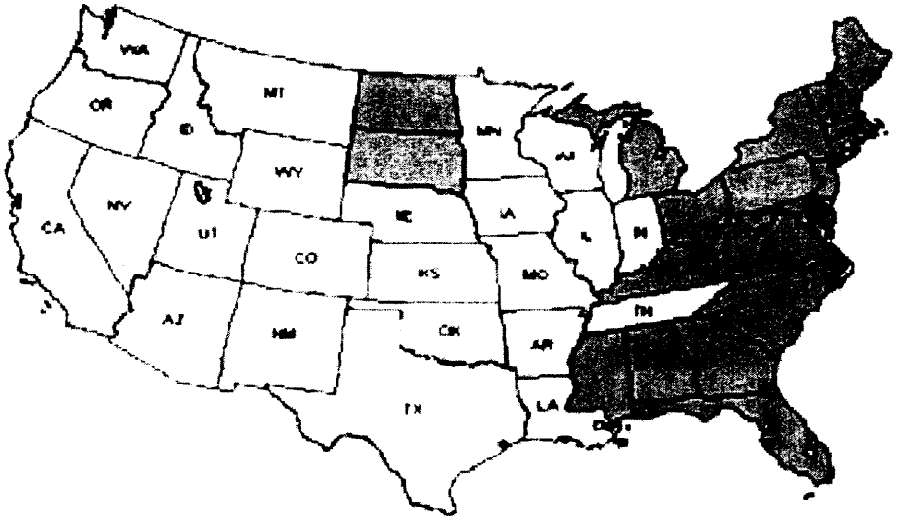
UNION PACIFIC RAILROAD COMPANY (UP)
(A subsidiary of Union Pacific Corp.)

Executive Office: Union Pacific Building
1416 Dodge Street
Omaha, NE 68179
(402) 271-5000

Executive Officers:

- Chairman, President and CEO, UP Corp: Richard K. Davidson
- President and COO, UPRR: Ike Evans

States Served:



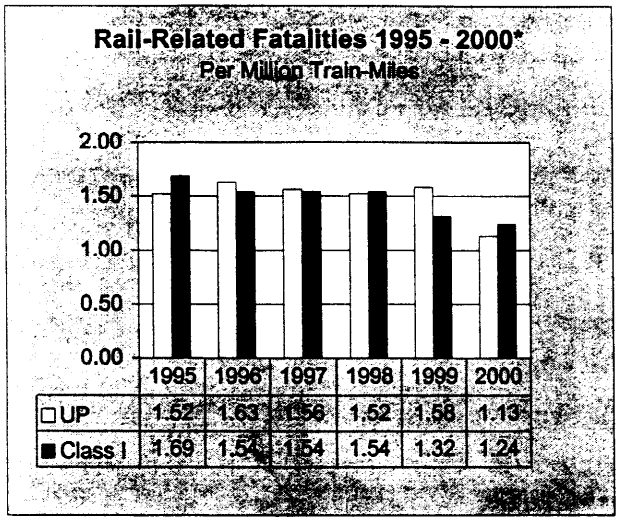
Railroad Profile:

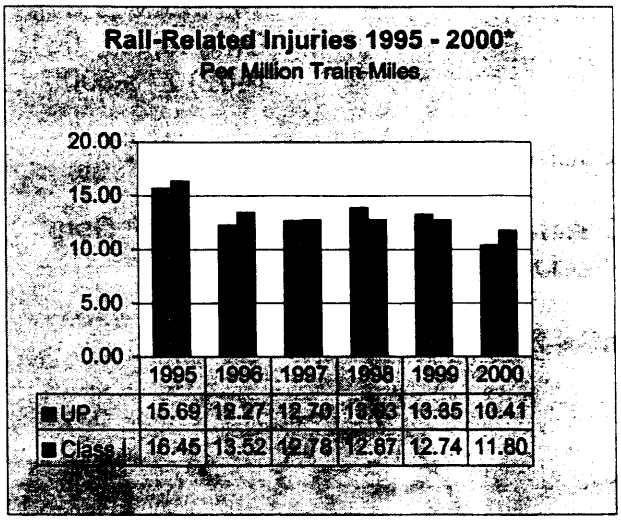
No. of Employees (Avg):	53,306
Miles of Road Operated:	33,341 covering 24 States
Traffic (Key Commodities):	Coal, Chemicals, Motor Vehicles, Grain, Crushed Stone

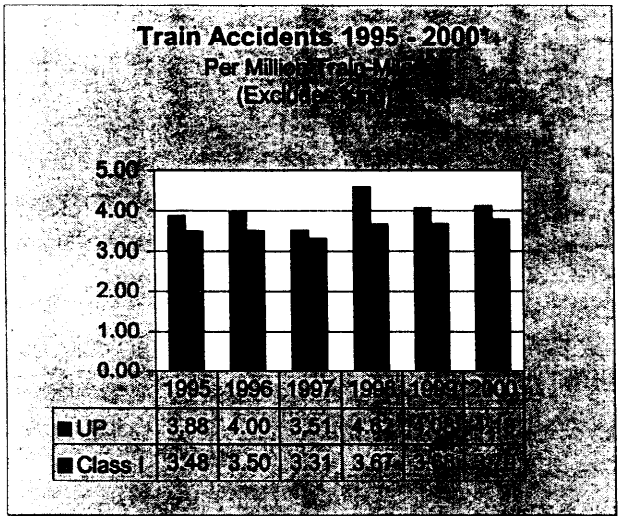
Financial and Operating Information ($ In Millions) - 1999:

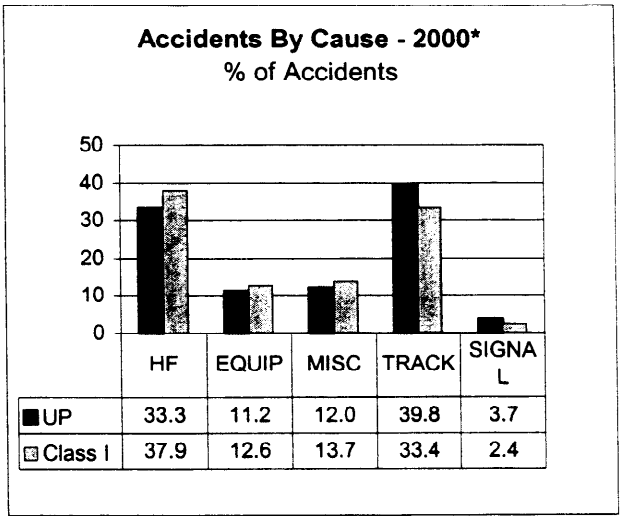
Total Assets ($)	29,356.2	Employee Hours (000)	136,118
Total Liabilities ($)	20,083.9	Train Miles	155,965,639
Net Shareholders' Eq ($)	9,272.3	Switching Hours (Freight)	4,456,030
Operating Revenues ($)	9,987.0	Rev Ton-Miles (b)	473.1
Operating Expenses ($)	8,222.3	Freight Car-Miles (000)	12,845,514
Current Ratio	0.4	Locomotive Miles	537,930,492
Net Rev From Operations	1,764.6	Locomotives	6,974
Debt/Equity Ratio	86.98%	Freight Cars In Service	114,736
MOW/Rev $	14.34%		

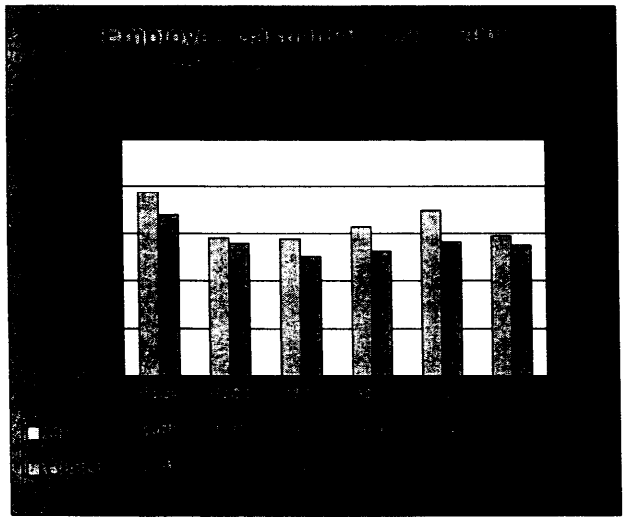
Union Pacific Railroad Company
Safety Performance

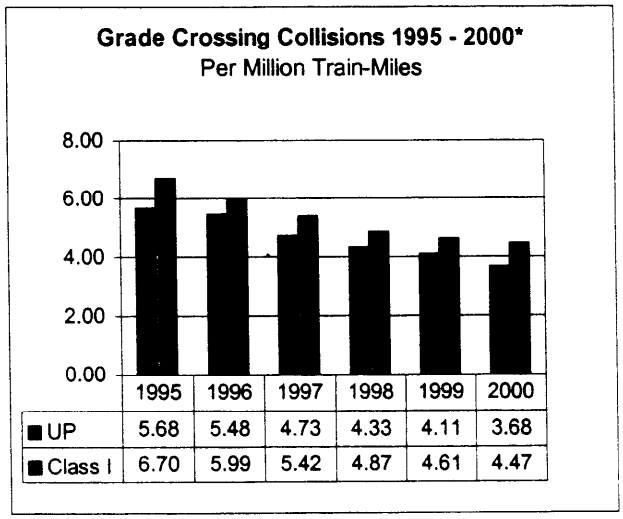












*Year 2000 data is preliminary.

Federal Railroad
Administration

March 2, 2001

TO: RSAC Members and Alternates

The next meeting of the full Railroad Safety Advisory Committee (RSAC) will be held on Monday, April 23, 2001. The meeting location will be the Colonial Room of The Mayflower, a Renaissance Hotel, 1127 Connecticut Avenue, NW, Washington, DC 20036, Phone (202) 347-7000. An agenda for the meeting is enclosed.

There are no sleeping rooms available at The Mayflower, but the Wyndham Washington, DC, 1400 M Street, NW, Washington, DC 20005, Phone 202/429-1700, is holding a block of rooms until April 1, 2001 at the government per diem rate of $119 per night. When you call the hotel to make your reservation please mention you are with the FEDERAL RAILROAD ADMINISTRATION GROUP. The Wyndham is three blocks from The Mayflower (using the 17th Street entrance).

Enclosed is a copy of the draft Minutes from the December 7 meeting. Please provide edits/comments to the Minutes to me by April 13.

Enclosed is a task summary on the proposed task to be discussed at the April meeting: Conforming Accident/Incident Regulations to new Department of Labor/Occupational Safety and Health Administration Requirements; Miscellaneous Reporting Guide Issues.

For informational purposes, I am enclosing copies of *Federal Register* notices regarding Locomotive Cab Sanitation Standards, Gage Restraint Measuring Systems, Roadway Maintenance Machine Safety, Power Brakes, and Remote Control Locomotives.

Trish Paolella
RSAC Coordinator
(202)493-6212
(202)493-6309 FAX
patricia.paolella@fra.dot.gov

ACTION: Final rule.

SUMMARY: This document grants a Petition for Reconsideration filed by Colon Johnston directed to the *Report and Order* in this proceeding to the extent of allotting Channel 244C2 to Walnut Grove, Mississippi. The *Report and Order* had dismissed this proposal. *See* 63 FR 26993, May 15, 1998. The reference coordinates for the Channel 244C2 allotment at Walnut Grove, Mississippi, are 32–42–50 and 89–23–48. With this action, the proceeding is terminated.

DATES: Effective March 13, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 97–188. Adopted January 24, 2001, and released January 26, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals 11, CY–A257, 445 12th Street SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR Part 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Walnut Grove, 244C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–3410 Filed 2–8–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–179, MM Docket Nos. 96–7, 96–12, RM–8732, RM–8845, RM–8741, File No. BPH–960206IE]

Radio Broadcasting Services; Banks, Redmond, Sunriver, Corvallis and The Dalles, Oregon

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial.

SUMMARY: This document denies the petition for reconsideration filed by Madgekal Broadcasting, Inc., licensee of Station KFLY, Corvallis, Oregon, as repetitive and, pursuant to Section 1.429(b) of the rules, as based on facts not previously presented. It also affirms the Commission's Report and Order granting the upgrade of Station KDBX (FM), Banks, Oregon, from Channel 298C2 to Channel 298C1, filed by Common Ground Broadcasting, superseded by American Radio Systems License Corp., and subsequently superseded by CBS, Inc; the substitution of Channel 269C2 for Channel 298C2 at Redmond, Oregon; the allotment of Channel *268C3 at The Dalles filed by LifeTalk Broadcasting Association; and the allotment of Channel 224C2 at Sunriver, Oregon, filed by Hurricane Broadcasting, Inc. In addition, the Report and Order denied a settlement agreement between American Radio Systems License Corp. and Madgekal Broadcasting Inc. in which Madgekal Broadcasting Inc. would accept an upgrade for Station KFLY(FM), Corvallis, Oregon, from Channel 268C2 to Channel 268C1 for a payment of $950,000. The staff also denied Madgekal Broadcasting Inc.'s competing proposal filed as a one-step upgrade application upgrading Station KFLY to Channel 268C at Corvallis.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket Nos. 96–7, 96–12, adopted January 24, 2001, and released January 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street NW, Washington, Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–3411 Filed 2–8–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 13]

RIN 2130–AB32

Track Safety Standards; Delay of Effective Date

AGENCY: Federal Railroad Administration (FRA), Department of Transportation, (DOT).

ACTION: Final rule and corrections; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001, 66 FR 7702, this action temporarily delays for 60 days the effective date of the rule entitled Track Safety Standards, published in the **Federal Register** on January 10, 2001, 66 FR 1894. That rule concerns an amendment to the Track Safety Standards which provides procedures for track owners to use Gage Restraint Measuring Systems (GRMS) to assess the ability of their track to maintain proper gage.

Likewise, this action temporarily delays for 60 days the effective date of the document entitled Track Safety Standards; Correction, published in the **Federal Register** on January 31, 2001, 66 FR 8372. This document corrects inadvertent errors contained in the above rule.

DATES: The effective date of the final rule amending 49 CFR part 213 published in the **Federal Register** on January 10, 2001, at 66 FR 1894, is delayed for 60 days, from April 10, 2001, until June 9, 2001. The effective date of the Corrections to the final rule amending 49 CFR part 213 published in the **Federal Register** on January 31, 2001, at 66 FR 8372 is delayed for 60 days, from April 10, 2001, until June 9, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy Lummen Lewis, Office of Chief

Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6047).

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, FRA's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, DC on January 31, 2001.

Ray Rogers,

Acting Deputy Administrator.

[FR Doc. 01–3211 Filed 2–8–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket Nos. FMCSA–97–2858 and FMCSA–99–5710]

RINs 2126–AA51 and 2126–A44 [formerly RINs 2125–E22 and 2125–AE60]

Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements for Operators of Small Passenger-Carrying CMVs; Delay of Effective Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the final rule entitled "Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements for Operators of Small Passenger-Carrying CMVs," published in the **Federal Register** on January 11, 2001, at 66 FR 2756. That rule adopts the statutory definition of a commercial motor vehicle (CMV) at 49 U.S.C. 31132; and amends the Federal Motor Carrier Safety Regulations to require that motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) for compensation file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register.

DATES: The effective date of the final rule amending 49 CFR part 390 published at 66 FR 2756, January 11, 2001, is delayed for 60 days from February 12, 2001, until April 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations (MC-PSV), (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel (MC-CC), (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the FMCSA's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunituy for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Dated: February 2, 2001.

Julie Anna Cirillo,

Assistant Administrator and Chief Safety Officer.

[FR Doc. 01–3210 Filed 2–8–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

RIN 2132–AA63

Major Capital Investment Projects; Partial Stay

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule; partial stay of effectiveness.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001, this action temporarily stays 49 CFR part 611, Major Capital Investment Projects, which was published in the **Federal Register** on December 7, 2000, at 65 FR 76864, with an effective date of February 5, 2001. That rule describes the procedures that FTA will use in the New Starts project evaluation and rating process. This temporary stay will allow the Department an opportunity for further consideration of this rule.

DATES: Effective February 5, 2001, 49 CFR part 611 is stayed until April 6, 2001, except for paragraphs (a)(1)(i)–(ii) and (d) of Appendix A to Part 611, which will become effective September 1, 2001.

FOR FURTHER INFORMATION CONTACT: For program issues, John Day, Office of Policy Development, FTA, (202) 366–4060. For legal issues, Scott A. Biehl, Assistant Chief Counsel, FTA, (202) 366–4063.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, FTA's implementation of this action without opportunity for public comment, effective February 5, 2001, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day stay of the rule is necessary to give Department officials the opportunity for further

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST-90-1, Notice No. 12]

RIN 2130-AB32

Track Safety Standards; Correction

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; corrections.

SUMMARY: The Federal Railroad Administration published in the **Federal Register** of January 10, 2001 (66 FR 1894), a final rule to amend the Track Safety Standards contained in 49 CFR part 213. This correction document corrects inadvertent errors in the final rule.

DATES: Effective on April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202-493-6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202-493-6047).

SUPPLEMENTARY INFORMATION: FRA published a final rule in the **Federal Register** of January 10, 2001 (66 FR 1894), which, effective April 10, 2001 amends the Track Safety Standards in 49 CFR part 213 by adding procedures for track owners to follow when using Gage Restraint Measuring Systems to assess the ability of their track to maintain proper gage. The final rule, however, contained several inadvertent errors which are corrected with this document.

In the final rule published on January 10, 2001, (66 FR 1894), make the following corrections:

Corrections to Preamble

1. On page 1894, third column, in the heading, following "Docket No. RST-90-1,", remove "Notice No. 9" and replace with "Notice No. 11."

2. On page 1894, third column, remove the last sentence of the section designated as **SUMMARY**, which states: "Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector."

3. On page 1896, third column, remove the paragraph under the section titled "*Paragraph (j),*" and replace with the following paragraph:

"The track owner is required to institute procedures that will ensure the integrity of data collected by the GRMS and PTLF systems. Daily GRMS instrument verification procedures should ensure that measurements made on the ground of loaded and unloaded gage parameters correlate to those recorded by the instrumentation. Track owners shall maintain documented calibration procedures on each GRMS vehicle and make them available upon request from an FRA representative. Track owners shall also develop and implement the necessary PTLF inspection and maintenance procedures so that the 4,000-pound reading is accurate within plus/minus five percent."

4. On page 1897, second column, remove the first paragraph under the section titled "*Paragraph (m),*" and replace with the following paragraph:

"While the remedial action table in paragraph (l) requires the use of the PTLF to measure compliance with the lateral restraint and gage requirements at identified exception locations in GRMS territory, paragraph (m) also provides for the use of a PTLF as an additional analytical tool by fully qualified § 213.7 individuals at other locations in GRMS territory. Paragraph (m) also describes the manner in which a PTLF must be used in GRMS territory, whether it is being used as an additional analytical tool or being used to meed the remedial action requirements set forth in paragraph (l). Compliance with §§ 213.109 and 213.127 will be demonstrated when a PTLF is applied and (1) the total gage widening at that location does not exceed 5/8 inch when increasing the applied force from 0 to 4,000 pounds, and (2) the gage of the track measured under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) of this section for the class of track involved. Gage widening in excess of 5/8 inch shall constitute a deviation from Class 1 standards."

Corrections to Rule

PART 213—[CORRECTED]

§ 213.110 [Corrected]

5. On page 1900, second column, in § 213.110, correct paragraph (j)(1) to read as follows:

§ 213.110 Gage restraint measurement systems.

* * * * *

(j) * * *

(1) Maintain and make available to the Federal Railroad Administration documented calibration procedures on each GRMS vehicle which, at a minimum, shall specify a daily instrument verification procedure that will ensure correlation between measurements made on the ground and those recorded by the instrumentation with respect to loaded and unloaded gage parameters; and

* * * * *

6. On page 1901, first column, in § 213.110(m), correct the introductory text to read as follows:

* * * * *

(m) Between GRMS inspections, the PTLF may be used as an additional analytical tool to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and fastener requirements of §§ 213.109 and 213.127. When the PTLF is used, whether as an additional analytical tool or to fulfill the requirements of paragraph (l), it shall be used subject to the following criteria—

* * * * *

Dated: January 17, 2001.

John V. Wells,

Acting Federal Railroad Administrator.

[FR Doc. 01-1973 Filed 1-30-01; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 000616184-0290-02; I.D. 050500A]

RIN 0648-AK74

Fisheries of the Exclusive Economic Zone Off Alaska; Sitka Pinnacles Marine Reserve; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a coordinate in the regulatory text of 50 CFR part 300 to correspond with a coordinate in Figure 18 to 50 CFR part 679. This corrects the final rule that implements Amendment 59 to the Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP), which was published November 9, 2000. Also, in the Code of Federal Regulations (CFR), this document corrects a misspelled acronym in the

(3) Whether a protective well would be economic to drill.

(b) You must notify BLM within 60 days from the date of actual or constructive notice of:

(1) Which of the actions in § 3162.2–4 you will take; or

(2) The reasons a protective well would be uneconomic.

(c) If you do not have sufficient information to comply with § 3162.2–9(b)(1), indicate when you will provide the information.

(d) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after we request it.

§ 3162.2–10 Will BLM notify me when it determines that drainage is occurring?

We will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if we believe that drainage is occurring. However, your responsibility to take protective action arises when you first knew or had constructive notice of the drainage, even when that date precedes the BLM demand letter.

§ 3162.2–11 How soon after I know of the likelihood of drainage must I take protective action?

(a) You must take protective action within a reasonable time after the earlier of:

(1) The date you knew or had constructive notice that the potentially draining well had begun to produce oil or gas; or

(2) The date we issued a demand letter for protective action.

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this on a case-by-case basis. When we determine whether you took protective action within a reasonable time, we will consider several factors including, but not limited to:

(1) Time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations which provide limited time frames in which to drill; and

(6) Weather conditions.

(c) If BLM determines that you did not take protection action timely, you will owe compensatory royalty for the period of the delay under § 3162.2–12.

§ 3162.2–12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?

The Department will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time we determine you should have taken protective action. You must continue to pay compensatory royalty until:

(a) You drill sufficient economic protective wells and remain in continuous production;

(b) We approve a unitization or communitization agreement that includes the mineral resources being drained;

(c) The draining well stops producing; or

(d) You relinquish your interest in the Federal or Indian lease.

§ 3162.2–13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer.

§ 3162.2–14 May I appeal BLM's decision to require drainage protective measures?

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165.3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840.

§ 3162.2–15 Who has the burden of proof if I appeal BLM's drainage determination?

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

§ 3165.3 [Amended]

13. Amend § 3165.3 by adding the phrase "and the lessee(s)," after "appropriate party" in the first sentence of paragraph (a).

14. Amend § 3165.4 by adding a new paragraph (e)(4) to read as follows:

§ 3165.4 Appeals.

* * * * *

(e) * * *

(4) When an appeal is filed under paragraph (a) of this section from a decision to require drainage protection, BLM's drainage determination will remain in effect during the appeal, notwithstanding the provisions of 43 CFR 4.21. Compensatory royalty and interest determined under 30 CFR Part 218 will continue to accrue throughout the appeal.

* * * * *

[FR Doc. 01–446 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 9]

RIN 2130–AB32

Track Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA amends the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measuring Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

DATES: *Effective Date:* This final rule is effective April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6047).

SUPPLEMENTARY INFORMATION:

Introductory Statement

Historically, railroads assess a track's ability to maintain gage through visual inspections of crossties and rail fastening systems. The maintenance decisions which determine crosstie and rail fastener replacement within the

industry today rely heavily on those visual inspections made by maintenance personnel whose subjective knowledge is based on varying degrees of experience and training. The subjective nature of these inspections sometimes results in inconsistent determinations about the ability of individual crossties and rail fasteners to maintain adequate gage restraint.

Crossties may not always exhibit strong indications of good or bad condition. If a crosstie in questionable condition is removed from track prematurely, its maximum service life is unnecessarily shortened resulting in added maintenance costs for the railroad. Yet, crossties of questionable condition left too long in track can cause a wide-gage derailment with its inherent risk of injury to railroad personnel and passengers and damage to property. In many instances of gage failure caused by defective crossties and/or rail fasterrers, the static or unloaded gage is within the limits prescribed by the Federal Track Safety Standards contained in 49 CFR part 213. However, when a train applies an abnormally high lateral load to a section of track which contains marginal crosstie or rail fastener conditions, the result is often a wide-gage derailment.

Statistics taken from the Federal Railroad Administration's (FRA's) Annual Accident/Incident Bulletins indicate that wide gage resulting from defective crossties and rail fasteners has been, and continues to be, the largest single cause of reportable track-caused derailments. In response to this problem, a long-standing joint FRA/industry research project has developed a non-destructive performance-based technology to objectively measure the gage restraint capacity of crossties and rail fasteners. The GRMS applies known lateral and vertical loads to the track structure, measures the gage deflection under those loads, and then projects what the gage would become under severe track loading conditions of 24,000 pounds lateral and 33,000 pounds vertical. From this data, a gage widening ratio is calculated as a measure of overall track strength.

In 1993, FRA granted CSX Transportation (CSXT) a waiver of compliance from portions of the Track Safety Standards so that it could conduct a test program to evaluate a GRMS performance-based standard. In lieu of implementing existing crosstie and rail fastener requirements, CSXT used FRA's research vehicle to judge track strength of nearly 500 miles of track in various segments. The experience gained from this test program has afforded FRA and the industry the opportunity to adjust the operational and conditional requirements of a GRMS program to make it a more consistent method of objectively determining crosstie and rail fastener effectiveness.

During the past several years, CSXT contracted for the design and construction of two GRMS vehicles which are in use over its system, including the waiver territory. The former Consolidated Rail Corporation used a GRMS vehicle over its system, and several other Class I railroads have expressed a serious interest in obtaining GRMS vehicles. FRA believes that the GRMS technology has now advanced to the point where railroads can use it to reliably assist in determining compliance with crosstie and rail fastener requirements contained in the Track Safety Standards.

Proceedings To Date

A. Track Working Group

On April 2, 1996, the Railroad Safety Advisory Committee (RSAC) agreed to provide advice and recommendations to FRA for revision of the Track Safety Standards. The RSAC then assigned that responsibility to a specialized working group comprised of approximately 30 representatives from labor, railroads, trade associations, state government groups, track equipment manufacturers, and FRA.

The Track Working Group met monthly from May, 1996, through October, 1996, to provide to FRA advice on the development of a draft Notice of Proposed Rulemaking (NPRM) to recommend to the RSAC. Although the Track Working Group discussed extensively the subject of GRMS, it was unable to reach consensus about how GRMS technology should be addressed in the revised Track Safety Standards. Representatives of the railroads had anticipated that the revised track standards would include a provision allowing railroads to use GRMS technology in place of inspection requirements already outlined in Part 213. Labor representatives, however, expressed strong reluctance to agree to a change that could replace some of the discretion and judgment already allowed track inspectors. They expressed fear that the judgment of track inspectors would be overruled completely by GRMS technology.

At a public meeting on October 31, 1996, the Track Working Group presented its proposed rule to the RSAC. The proposed rule did not include a provision for GRMS. The RSAC therefore appointed a small task group to evaluate the possibility of developing GRMS standards to be added to the revised Track Safety Standards at a later time.

The proposed rule, based on recommendations received from the Track Working Group, was approved by a majority consensus of the RSAC, which in turn, recommended the proposal to FRA for adoption. On July 3, 1997, FRA issued an NPRM largely based upon that proposal. *See* 62 FR 36168. FRA conducted a public hearing and received mostly favorable comments from 12 respondents. On June 22, 1998, FRA issued a final rule, based upon its NPRM and the comments it received in response. *See* 63 FR 33992. Both the NPRM and the final rule identified and discussed the relevant issues concerning GRMS.

B. GRMS Task Group

A specialized Task Group met five times from June 1997, through February 1998, to advise FRA on regulatory language which addresses the use of GRMS technology for possible inclusion into the Track Safety Standards. The Task Group was comprised of approximately 12 representatives from labor, railroads, trade associations, state government groups, the Department of Transportation's Research and Special Programs Administration, and FRA. A member of the National Transportation Safety Board also participated in an advisory capacity.

The Task Group discussed at length whether GRMS technology should replace, or merely supplement, traditional inspection methods and the requirements for crossties and rail fasteners. Representatives of labor organizations argued that the technology should be used in conjunction with traditional inspection methods and existing requirements. Representatives of railroad management argued that GRMS technology should more than supplement existing standards because the use of GRMS technology produces an objective determination of whether crossties are able to continue effectively maintaining adequate gage restraint, or are approaching the end of their service lives and must be replaced. In some cases, the traditional method of crosstie evaluation would not necessarily agree with the GRMS evaluation.

To resolve this disagreement, the Task Group agreed that a GRMS provision in the Track Safety Standards should provide for discretion of employees fully qualified under § 213.7 to use Portable Track Loading Fixtures (PTLFs) between GRMS inspections to make individual judgements about a track's ability to maintain gage. A PTLF is a hand-carried gage measuring device that

exerts a lateral force between rails to test a track's ability to maintain gage under that pressure. Although the PTLF does not exert vertical force, as does the GRMS vehicle, it nevertheless functions as a surrogate measurement of track strength between inspections with the full-sized GRMS vehicle.

This amendment to the Track Safety Standards reflects the resolution reached by the Task Group. Under this amendment, railroads may designate track segments to be evaluated regularly by GRMS technology. Employees fully qualified under § 213.7 will use the PTLF as an additional analytical tool to determine compliance with the crosstie and fastener requirements. If a location passes the PTLF criteria, but the employee is uncomfortable with the condition of the track at that location, the employee retains the discretion to take additional remedial actions, such as placing slow orders at that location. On lines designated by the railroads to be evaluated by GRMS, FRA inspectors will determine compliance with the crosstie and fastener requirements solely on the basis of a PTLF measurement.

This amendment provides for two levels of compliance exceptions on track designated as GRMS track. This method closely follows the current procedures in effect on the CSXT waiver territory. First level exceptions are those locations which require the railroads to immediately place a 10 mph speed restriction, followed by verification and corrective action. Second level exceptions are those locations which do not appear to require immediate attention but must be monitored to ensure that they do not become defects before the next GRMS inspection.

The amendment also requires track owners to implement a formal training program for employees who are fully qualified under § 213.7 and whose territories are subject to the operation of a GRMS vehicle. The training program should provide affected employees with the necessary information to locate and verify GRMS defects, prescribe and record the appropriate remedial action, and provide specific instructions on the use and calibration of the PTLF.

In developing recommendations for inspection frequency requirements for GRMS, the Task Group considered such factors as class of track, amount of traffic, and whether or not the line is used for passenger transportation. In consideration of these varying factors, this amendment adopts a simplified but conservative approach by requiring annual GRMS inspections, not to exceed 14 months between inspections, on all line segments where the annual tonnage exceeds two million gross tons (MGTs) or where the maximum operating speed for passenger trains is more than 30 mph. On line segments where the traffic is two MGTs or less, and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between inspections must not exceed 24 months. This longer inspection interval makes the technology more accessible to short lines which may not have the same equipment or financial resources available to the larger railroads.

Section-By-Section Analysis of § 213.110

Paragraph (a)

Paragraph (a) provides for the implementation of a GRMS, supplemented by the use of a PTLF, to determine compliance with the crosstie and rail fastener requirements specified in §§ 213.109 and 213.127. Track owners electing to implement this technology must provide the appropriate FRA Regional Office with notification that specifically identifies the line segment(s) where GRMS will be used. The appropriate FRA office is the headquarters location for the FRA region in which the GRMS designated line segment is located.

The notification must be provided to FRA at least 30 days prior to the designation of any line segment which will be subject to the requirements of this section. Track owners must also provide FRA with at least 10 days notice prior to the removal of a line segment from GRMS designation.

Paragraph (b)

This paragraph specifies what information track owners should include in their notifications to FRA about line segments designated for GRMS inspection. The information must include, at a minimum, the segment's timetable designation, milepost limits, track class, million gross tons of traffic per year, and any other identifying characteristics of the segment.

Paragraph (c)

This paragraph describes minimum design requirements for GRMS vehicles. Track owners must submit to FRA sufficient technical data so that the agency can establish whether or not the track owner is in compliance with these design requirements. The paragraph requires that gage must be measured between the heads of the rail at an interval not exceeding 16 inches. The paragraph provides for design flexibility by establishing acceptable ranges for the lateral/vertical load ratio and the resulting lateral load severity, both of which can be satisfied by various load configurations, provided that the applied vertical load is not less than 10,000 pounds per rail.

Paragraphs (d), (e), and (f)

The mathematical formulas prescribed in these paragraphs are to be used in the calculation of the Gage Widening Ratio (GWR) and the Projected Loaded Gage 24 (PLG 24). The accurate measurements of unloaded gage, GRMS loaded gage, and the lateral load applied are of critical importance because these measurements are used in the calculation of PLG 24 values and the values for GWR, values which comprise a direct measure of track strength. Therefore, to avoid any influence from adjacent loads, design requirements specify that the unloaded track gage must be measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application. Loaded track gage measured by the GRMS vehicle shall be measured at a point no more than 12 inches from the lateral load application point.

The Task Group recommended that the loaded track gage measurement be taken at the point of application of the lateral load, as is the practice on existing in-service GRMS vehicles that use displacement transducers mounted on the instrumented wheelset. This final rule provides for the use of other gage measuring technologies, such as optical and laser gage measuring systems, by allowing the measurement of loaded gage to be taken no more than 12 inches from the lateral load application point.

Paragraphs (g), (h), and (i)

GRMS vehicles must be also capable of producing strip chart traces of all the parameters specified in paragraph (l) of this section, as well as a printed exception report listing by magnitude and location all exceptions from these parameters. The exception report listing must be provided to the appropriate person designated as fully qualified under § 213.7 prior to the next inspection required under § 213.233 of this part.

Paragraph (j)

The track owner is required to institute procedures that will ensure the integrity of data collected by the GRMS and PTLF systems. Track owners must maintain documented calibration procedures on each GRMS vehicle and make them available upon request from an FRA representative. FRA understands that common procedure is for GRMS systems to be calibrated at least once per day. Therefore, the rule requires that the procedures must

specify that calibration is done at least once per day. Track owners must also develop and implement the necessary PTLF inspection and maintenance procedures so that the 4,000-pound reading is accurate within plus/minus five percent.

Paragraph (k)

This paragraph recognizes the need for all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of this section to receive training on the implementation of GRMS technology. The track owner, therefore is required to develop a formal GRMS training program which must be made available to FRA upon request.

The training program must provide detailed instruction on the specific areas identified in this paragraph. In particular, the training must address basic GRMS operational procedures, interpretation and handling of exception reports, how to locate and verify GRMS defects in the field, remedial action requirements to be initiated when defects are verified, how to use and calibrate the PTLF, and the recordkeeping requirements associated with the implementation of GRMS technology.

Paragraph (l)

This paragraph specifies the parameters and threshold levels to be reported as a record of lateral restraint following an inspection by a GRMS vehicle. The regulation requires that two levels of exceptions are reported during the GRMS inspection. Specific remedial actions are required for each level, as identified in the Remedial Action Table in this section. First Level exceptions are required to be immediately protected by a 10 mph speed restriction until verification and corrective action can be instituted. Second Level exceptions are to be monitored and maintained within the PTLF criteria outlined in paragraph (m) of this section.

Footnote 2 in the Remedial Action Table of this section recognizes that typical good track will increase in total gage by as much as ¼ inch due to outward rail rotation under GRMS loading conditions. Accordingly, for Class 2 and Class 3 track, the GRMS loaded track gage values are also increased by ¼ inch to a maximum of 58 inches. GRMS loaded track gage values in excess of 58 inches must always be considered First Level exceptions. This ¼ inch allowance in gage applies only to GRMS loaded gage, and does not apply to PTLF gage measurements or to measurements made by more traditional methods.

Paragraph (m)

Paragraph (m) describes the manner in which a PTLF must be used as an additional analytical tool, between GRMS inspections, to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and rail fastener requirements specified in §§ 213.109 and 213.127. At locations identified by a GRMS record of inspection, or at any other location along the track, compliance with the crosstie and rail fastener requirements will be demonstrated when a PTLF is applied and (1) the total gage widening at that location does not exceed ⅝ inch when increasing the applied force from 0 to 4,000 pounds, and (2) the gage of the track measured under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) of this section for the class of track involved. Gage widening in excess of the ⅝ inch must constitute a deviation from Class 1 standards.

At locations where compliance with the crosstie and rail fastener requirements have been demonstrated through the use of a PTLF, a fully qualified § 213.7 individual retains the discretionary authority to prescribe additional remedial actions, such as the placement of speed restrictions, if the individual deems it necessary. FRA inspectors will determine compliance with the crosstie and fastener requirements solely on the basis of the PTLF measurements.

When a functional PTLF is not available to a fully qualified § 213.7 individual during a scheduled inspection under § 213.233 of this part, the track owner must repair or replace the PTLF prior to the next inspection required under § 213.233, or crosstie and rail fastener compliance will be based solely on the requirements specified in §§ 213.109 and 213.127.

At locations where crosstie or rail fastening compliance is questioned and vertical loading of the track structure is necessary to restore contact with the lateral rail restraint components, the crossties must be raised until lateral restraint contact is restored and a PTLF measurement must then be made.

Paragraph (n)

The track owner must maintain a record of the two most recent GRMS inspections at locations meeting the requirements specified in § 213.241(b). The records must indicate the location and nature of each First Level exception and, the nature and date of initiated remedial action, if any, for each First Level exception. First Level exceptions are described in the Remedial Action Table in Paragraph (l).

The track owner is not required to maintain records of Second Level exceptions. However, as required in paragraph (i), reports of all exceptions, including Second Level exceptions, must be provided to the appropriate fully qualified § 213.7 individuals prior to the next inspection required under § 213.233. Second Level exceptions are also described in the Remedial Action Table in Paragraph (l).

Paragraph (o)

On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually, with no more than 14 months between inspections. The maximum interval of 14 months is intended to provide some flexibility for scheduling when it may not be possible to schedule annual inspections within the same calendar month each year.

On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections cannot exceed 24 months. This extended frequency is an attempt to make the technology more accessible to short line operators who may not have the financial or equipment resources available to larger railroads.

Paragraph (p)

This list of definitions is offered to provide explanation of terms that are essential to the implementation of GRMS technology.

Regulatory Impact: Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. The final rule amending the Track Safety Standards is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February, 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, N.W., Seventh Floor, Washington, D.C. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

Ordinarily, in conducting an analysis of the costs and benefits of a proposed or final rule, FRA gathers more extensive economic data than was made available in this proceeding. However, in light of the consensus in the GRMS Task Group, the Track Working Group, and the majority vote of the RSAC members, FRA does not believe more data is necessary. FRA has relied principally on the recommendations and experience of the railroad industry and labor representatives who, through the RSAC process, helped develop this rule. The GRMS Task Group members provided valuable non-quantitative data on their preferences. Thus, their unanimous consensus on the contents of the rule allows FRA to conclude that the rule is cost beneficial.

The main benefit of GRMS technology is that a railroad can improve safety by replacing ties that are not providing lateral restraint, and leave in service ties that may not look good but are providing adequate lateral restraint. The railroads using a GRMS will probably replace fewer ties initially, but by objectively determining through performance testing which ties need to be replaced, will be better able to ensure that existing ties will provide adequate lateral restraint. The primary reduction in costs to the railroad would result from a reduction in the number of ties replaced. In addition, the railroads would benefit from reduced accident costs and lower maintenance costs in attempting to maintain the geometry of track. The Association of American Railroads (AAR) estimates employment of a GRMS would reduce the requirement for new ties by 600,000 per year in the early years, although this benefit is likely to later shrink somewhat due to the finite life expectancy of crossties which a GRMS cannot extend. At $40 per tie, the benefit to the industry would be about $24 million in the first year. The 20-year discounted net present value would be about 10 times that amount, or $240 million, assuming some later shrinkage in the benefit and a seven percent discount rate. Assuming there are approximately 200,000 miles of track in the Nation, and each mile includes approximately 3,300 crossties, FRA believes this projection is reasonable.

A GRMS also provides a safety benefit. Wide gage derailments cost the railroad industry about $60 million per year. If GRMS can reduce the number of wide gage derailments by half, the railroad industry will save $30 million per year. The 20-year discounted benefit would be approximately 10 times that amount, or $300 million, assuming systemwide adoption of a GRMS.

This final rule provides the use of a GRMS as an option. It is not mandatory. Therefore, a railroad will not implement a GRMS unless the railroad believes that the benefit of the system will exceed its cost. A GRMS vehicle costs approximately $3 million. About 10 of them would be needed nationwide to test all of the railroads. Therefore, the cost of the vehicles to the railroad industry would be $30 million. The costs of operating a GRMS is approximately $300,000. The 20-year discounted cost therefore would be $3 million. In addition, the railroad industry would need approximately 1,000 PTLFs. At a cost of about $1,200 each, the total cost to the industry for PTLFs would be approximately $1.2 million.

In addition to the equipment costs, railroads would expend about $800 each to train track inspectors on the use of PTLFs. Assuming one track inspector per PTLF, the cost to the railroad industry for training would be $800,000. The total initial investment by the railroad industry, including equipment and training, would be $32 million.

Assuming maintenance costs about 10 percent of the initial investment, and maintenance most likely would not be needed the first year, the 20-year discounted cost of maintenance would be about nine times 10 percent, or 90 percent of $32 million: $28.8 million. Thus the total 20-year discounted cost would be about $60.8 million.

This non-mandatory provision for use of GRMS could return as much as $540 million in discounted benefits to the railroad industry, at a discounted cost of only $60.8 million, assuming GRMS procedures are adopted nationwide. The railroad industry will most likely gain financially while improving safety.

Federalism Implications

This final rule has been analyzed according to the principles of Executive Order 13132 ("Federalism"). The GRMS Task Group which developed this amendment to the Track Safety Standards included a representative of the American Association of State Highway and Transportation Officials (AASHTO). In addition, the task group included railroad and labor union representatives who operate in a number of different states. As far as FRA has been able to discern, there are no states which require, provide for, or otherwise regulate the use of GRMS procedures for inspecting and maintaining track gage. Therefore, this amendment to Part 213 does not have any federalism implications.

Regulatory Flexibility Act

This amendment to the Track Safety Standards provides for an alternative option for railroads to use in evaluating gage restraint capabilities of track. The use of a GRMS is not mandatory. Therefore, FRA concludes that this amendment will have no measurable impact on small units of government, businesses, or other organizations. FRA certifies that this amendment does not impose a significant economic impact on a substantial number of small entities. Therefore, the preparation of a Regulatory Flexibility Analysis is not required in accordance with 5 U.S.C. 605(b).

Small Business Regulatory Enforcement Fairness Act of 1996

Because an analysis under the Regulatory Flexibility Act is not required for this amendment to the Track Safety Standards, FRA is likewise not required to issue a Small Entity Compliance Guide to summarize the requirements of this rule, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this amendment have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements of the new section, which will be added to those of the Track Safety Standards (49 CFR Part 213), and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (hours)	Total annual burden cost
213.110—GRMS Technical Data 1—Compliance with Minimum Design Requirements.	685	40 notifications	45 minutes	46	$1,140
—GRMS Vehicle Output Reports	685	150 reports	5 minutes	13	494

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (hours)	Total annual burden cost
—GRMS Vehicle Exception Reports	685	150 reports	5 minutes	13	494
—GRMS Documented Calibration Procedures	685	10 documents	2 hours	20	760
—GRMS Training Programs + Training Sessions	685	10 programs + 25 sessions.	16 hours	560	21,280
—GRMS Inspection Records	685	200 records	2 hours	400	15,200

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. Information or a copy of the paperwork package submitted to OMB may be obtained by contacting Robert Brogan, Federal Railroad Administration, Office of Safety Analysis, at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than March 12, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, Office of Safety Analysis, Mail Stop 17, 1120 Vermont Ave., NW., Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty for violating information collection requirements on persons who do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this amendment to the Track Safety Standards in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. This amendment meets the criteria that establish it as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends part 213, title 49, Code of Federal Regulations as follows:

1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461; and 49 CFR 1.49(m).

2. Section 213.110 is added to read as follows:

§ 213.110 Gage restraint measurement systems.

(a) A track owner may elect to implement a Gage Restraint Measurement System (GRMS), supplemented by the use of a Portable Track Loading Fixture (PTLF), to determine compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(1) The track owner notifies the appropriate FRA Regional office at least 30 days prior to the designation of any line segment on which GRMS technology will be implemented; and

(2) The track owner notifies the appropriate FRA Regional office at least 10 days prior to the removal of any line segment from GRMS designation.

(b) Initial notification under paragraph (a)(1) of this section shall include—

(1) Identification of the line segment(s) by timetable designation, milepost limits, class of track, or other identifying criteria; and

(2) The most recent record of million gross tons of traffic per year over the identified segment(s).

(c) The track owner shall also provide to FRA sufficient technical data to establish compliance with the minimum design requirements of a GRMS vehicle which specify that—

(1) Gage restraint shall be measured between the heads of rail —

(A) At an interval not exceeding 16 inches;

(B) Under an applied vertical load of no less than 10,000 pounds per rail; and

(C) Under an applied lateral load which provides for a lateral/vertical load ratio between 0.5 and 1.25, and a load severity greater than 3,000 pounds but less than 8,000 pounds.

(d) Load severity is defined by the formula—$S=L-cV$

Where—

S=Load severity, defined as the lateral load applied to the fastener system (pounds).

L=Actual lateral load applied (pounds).

c=Coefficient of friction between rail/tie which is assigned a nominal value of (0.4).

V=Actual vertical load applied (pounds).

(e) The measured gage values shall be converted to a Projected Loaded Gage 24 (PLG 24) as follows—

$$PLG\ 24 = UTG + A \times (LTG - UTG)$$

Where—

UTG=Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

LTG=Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

A=The extrapolation factor used to convert the measured loaded gage to expected loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

For all track—

$$A = \frac{13.513}{(.001 \times L - .000258 \times V) - .009 \times (.001 \times L - .000258 \times V)^2}$$

Note: The A factor shall not exceed (3.184) under any valid loading configuration.

where—

L=Actual lateral load applied (pounds).

V=Actual vertical load applied (pounds).

(f) The measured gage value shall be converted to a Gage Widening Ratio (GWR) as follows —

$$GWR = \frac{(LTG - UTG)}{L} \times 16{,}000$$

(g) The GRMS vehicle shall be capable of producing output reports that provide a trace, on a constant-distance scale, of all parameters specified in paragraph (l) of this section.

(h) The GRMS vehicle shall be capable of providing an exception report containing a systematic listing of all exceptions, by magnitude and location, to all the parameters specified in paragraph (l) of this section.

(i) The exception reports required by this section shall be provided to the appropriate person designated as fully qualified under § 213.7 prior to the next inspection required under § 213.233.

(j) The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the GRMS and PTLF systems. At a minimum, the track owner shall—

(1) Maintain and make available to the Federal Railroad Administration documented calibration procedures on each GRMS vehicle which, at a minimum, shall specify a daily instrument verification procedure; and

(2) Maintain each PTLF used for determining compliance with the requirements of this section such that the 4,000-pound reading is accurate to within five percent of that reading.

(k) The track owner shall provide training in GRMS technology to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of this section. The training program shall be made available to the Federal Railroad Administration upon request. At a minimum, the training program shall address—

(1) Basic GRMS procedures;

(2) Interpretation and handling of exception reports generated by the GRMS vehicle;

(3) Locating and verifying defects in the field;

(4) Remedial action requirements;

(5) Use and calibration of the PTLF; and

(6) Recordkeeping requirements.

(l) The GRMS record of lateral restraint shall identify two exception levels. At a minimum, the track owner shall initiate the required remedial action at each exception level as defined in the following table—

GRMS parameter [1]	If measurement value exceeds	Remedial action required
	First Level Exception	
UTG	58 inches	(1) Immediately protect the exception location with a 10 mph speed restriction; then verify location; and (2) Restore lateral restraint and maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) of this part as measured with the PTLF.
LTG	58 inches	
PLG24	59 inches	
GWR	1.0 inches	
	Second Level Exception	
LTG	57¾ inches on Class 4 and 5 track [2].	[2] Limit operating speed to no more than the maximum allowable under § 213.9 for Class 3 track; then verify location; and (1) Maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (2) Maintain compliance with § 213.53(b) of this part as measured with the PTLF.
PLG24	58 inches	
GWR	0.75 inches	

[1] Definitions for the GRMS parameters referenced in this table are found in paragraph (p) of this section.

[2] This note recognizes that typical good track will increase in total gage by as much as ¼ inch due to outward rail rotation under GRMS loading conditions. For Class 2 & 3 track, the GRMS LTG values are also increased by ¼ inch to a maximum of 58 inches. However, for any Class of track, GRMS LTG values in excess of 58 inches are considered First Level exceptions and the appropriate remedial actions must be taken by the track owner. This ¼-inch increase in allowable gage applies only to GRMS LTG. For gage measured by traditional methods, or with the use of the PTLF, the table in § 213.53(b) will apply.

(m) Between GRMS inspections, the PTLF shall be used as an additional analytical tool to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and fastener requirements of §§ 213.109 and 213.127 subject to the following criteria—

(1) At any location along the track that the PTLF is applied, that location will be deemed in compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(i) The total gage widening at that location does not exceed ⅝ inch when increasing the applied force from 0 to 4,000 pounds; and

(ii) The gage of the track under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) for the class of track.

(2) Gage widening in excess of ⅝ inch shall constitute a deviation from Class 1 standards.

(3) A person designated as fully qualified under § 213.7 retains the discretionary authority to prescribe additional remedial actions for those locations which comply with the requirements of paragraph (m)(1)(i) and (ii) of this section.

(4) When a functional PTLF is not available to a fully qualified person designated under § 213.7, the criteria for determining crosstie and fastener compliance shall be based solely on the requirements specified in §§ 213.109 and 213.127.

(5) If the PTLF becomes non-functional or is missing, the track owner will replace or repair it before the next inspection required under § 213.233.

(6) Where vertical loading of the track is necessary for contact with the lateral rail restraint components, a PTLF test will not be considered valid until contact with these components is restored under static loading conditions.

(n) The track owner shall maintain a record of the two most recent GRMS inspections at locations which meet the requirements specified in § 213.241(b). At a minimum, records shall indicate the following—

(1) Location and nature of each First Level exception; and

(2) Nature and date of remedial action, if any, for each exception identified in paragraph (n)(1) of this section.

(o) The inspection interval for designated GRMS line segments shall be such that—

(1) On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually at an interval not to exceed 14 months; or

(2) On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections must not exceed 24 months.

(p) As used in this section—

(1) *Gage Restraint Measurement System (GRMS)* means a track loading vehicle meeting the minimum design requirements specified in this section.

(2) *Gage Widening Ratio (GWR)* means the measured difference between loaded and unloaded gage measurements, linearly normalized to 16,000 pounds of applied lateral load.

(3) *L/V ratio* means the numerical ratio of lateral load applied at a point on the rail to the vertical load applied at that same point. GRMS design requirements specify an L/V ratio of between 0.5 and 1.25. GRMS vehicles using load combinations developing L/V ratios which exceed 0.8 must be operated with caution to protect against the risk of wheel climb by the test wheelset.

(4) *Load severity* means the amount of lateral load applied to the fastener system after friction between rail and tie is overcome by any applied gage-widening lateral load.

(5) *Loaded Track Gage (LTG)* means the gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

(6) *Portable Track Loading Fixture (PTLF)* means a portable track loading device capable of applying an increasing lateral force from 0 to 4,000 pounds on the web/base fillet of each rail simultaneously.

(7) *Projected Loaded Gage (PLG)* means an extrapolated value for loaded gage calculated from actual measured loads and deflections. PLG 24 means the extrapolated value for loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

(8) *Unloaded Track Gage (UTG)* means the gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load.

Issued in Washington, D.C. on January 4, 2001.

John V. Wells,

Acting Federal Railroad Administrator.

[FR Doc. 01–590 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH72

Import of Polar Bear Trophies From Canada: Change in the Finding for the M'Clintock Channel Population and Revision of Regulations in 50 CFR 18.30

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency interim rule with request for comments.

SUMMARY: We, the Fish and Wildlife Service, are amending our regulations, under the Marine Mammal Protection Act (MMPA), on the import of polar bears (*Ursus maritimus*) taken by U.S. hunters in sport hunts from M'Clintock Channel, Nunavut Territory, Canada. We have reviewed new information submitted by the Department of Environment Canada (Canadian Wildlife Service) which indicates that this population is severely depleted and current harvest quotas are unsustainable. We find that the M'Clintock Channel population no longer meets the import requirements of the MMPA and are amending our regulations to reflect that bears sport hunted in this population after the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the dramatic change in population status, we are using this emergency interim rule to make the changes to our regulations effective immediately. In addition, we are updating our regulations to reflect the new territory of Nunavut and to notify the public on the lifting by Canada of the harvest moratorium in the Viscount Melville Sound polar bear population.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 26, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 01-696 Filed 1-9-01; 8:45 am]

BILLING CODE 6560-50-U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA-2000-8156, Notice No.1]

RIN 2130-AB28

Roadway Maintenance Machine Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend its regulations by adding operational and design safety standards for railroad on-track roadway maintenance machines. The proposed regulations cover self-propelled rail-mounted non-highway machines whose light weight exceeds 7,500 pounds.

DATES: *Written Comments:* Written comments must be received before March 12, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: FRA does not plan to conduct a public hearing unless requested to do so by an interested party.

ADDRESSES: *Written comments:* Submit one copy to the Department of Transportation Central Docket Management Facility located in Room PL-401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material on the proposed rule will be available for inspection at this address and on the Internet at *http://doms.dot.gov.* Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Persons desiring notification that their comments have been received should submit with their comments a stamped, self-addressed postcard. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

Public hearing: The date and location of the public hearing will be announced at a later date in this publication.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202-493-6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202-493-6047).

SUPPLEMENTARY INFORMATION:

Introduction

Background

In May, 1990, the Brotherhood of Maintenance of Way Employes (BMWE) filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. The final rule resulting from that rulemaking was published in December, 1996 (*see* 61 FR 65959), and the regulations addressing roadway worker safety now reside in 49 C.F.R. part 214, subpart C.

Also in 1996, FRA requested that the newly formed Railroad Safety Advisory Committee (RSAC) address by rulemaking the revision of the Track Safety Standards, as petitioned by the BMWE. The RSAC agreed to the task and formed a Track Working Group to draft a proposed revision. The Track Working Group decided by consensus that the draft revision would update the Track Safety Standards found at 49 C.F.R. part 213, and that a new set of regulations addressing the safety of on-track roadway maintenance machines would be initiated in a separate rulemaking. The RSAC approved by majority consensus a draft Notice of Proposed Rulemaking (NPRM) for revision of part 213 in October, 1996. FRA published the NPRM on July 3, 1997 (*see* 62 FR 36138), and the final rule on June 22, 1998 (*see* 63 FR 33992). The revised track standards became effective on September 21, 1998.

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks adopted by the RSAC: the amendment of part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS) and the amendment of part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft by consensus rule language, as well as analysis of the new rule for the preamble. The product of that Task Group is contained in this document.

The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), Norfolk Southern Railway, an equipment supplier, and the BMWE. The group met several times and conducted numerous conference calls before reaching

agreement on draft rule language to recommend to the RSAC for approval.

Early Efforts and Size Categories

The Task Group initially divided roadway maintenance machines into three broad categories: On-track, on/off track, such as hi-rails, and off-track. The group quickly decided to confine the regulations to on-track equipment and equipment used both on and off track. The group further divided two remaining categories of roadway maintenance machines into five sub-categories: large self propelled equipment, medium self propelled equipment, small "walk-along" equipment, hi-rail equipment and motor cars.

The Task Group conducted a systematic review of various types and configurations of machinery, as well as their current use in the railroad industry. The group determined that the railroad industry is rapidly phasing out the use of motor cars, replacing them with hi-rail vehicles. In fact, motor cars have not been manufactured for use in the United States in several years. Therefore, the Task Group decided there was no need to write a rule covering motor cars. However, if in the future, the industry returns motor cars for widespread use as inspection vehicles, FRA may reconsider its decision to exclude motor cars from this regulation.

Next, the Task Group decided to eliminate small "walk-along" track equipment from the scope of the new regulations. "Walk-along" equipment includes small pieces of track maintenance equipment that rolls on the rails but may not be self-propelled. This type of machine includes tie borers, nut runners, portable rail grinders and other track maintenance equipment of similar size which can be placed on, or removed from, the track with relative ease by one or more roadway workers. The group determined that the great variety of this type of equipment would dictate writing a very complicated set of regulations governing a category of equipment that does not pose a very significant safety hazard. Therefore, the Task Group decided to focus the rulemaking on the three remaining sub-categories groups of roadway maintenance equipment: large on-track machines, medium on-track machines, and hi-rails.

To distinguish large on-track machines from medium-sized on-track machines, the Task Group decided to consider the light weight of the vehicles. Large equipment was designated "Category I" and included on-track self-propelled roadway maintenance machines that weigh (light weight) more than 17,500 lbs. "Category II" machines included similar equipment whose light weight was less than 17,500 lbs. but more than 7,500 pounds.

The final categorization of covered roadway maintenance machines dealt with the age of the vehicles. The Task Group determined that all of the regulations would apply to new machines. The group decided to define "new" as any machine ordered for manufacture 90 days after the issuance of a final rule. This delay in the implementation of the rule on new equipment is meant to prevent the rule from interfering with the manufacture of new equipment already on order but not yet completed as of the date of the issuance of the final rule.

Likewise, the Task Group felt it necessary to limit the number of older roadway maintenance machines that would need retrofitting following the issuance of a final rule in this proceeding. Because technology has much changed and many types of roadway maintenance machines have been redesigned in more recent years, the Task Group determined that the new rule should not apply to the oldest equipment in the industry's collective fleet. Therefore, the group decided that the requirements for retrofitting would not apply to any roadway maintenance machine manufactured prior to 1990.

With the parameters about types of equipment agreed upon, the Task Group then set out to determine what safety features on the machine should be covered by the regulations. The group reviewed existing standards for work equipment issued by the Occupational Safety and Health Administration (OSHA), and discussed the American National Standards Institute (ANSI) and the Society of Automotive Engineers (SAE) standards, which are voluntary industry standards. The group identified 18 items on the Category I and Category II machines that should be included in the regulations:

- Operator Seating
- Brakes
- Horn
- Work Lights
- Mirrors
- Change of Direction Alarm
- Fire Extinguisher
- Safety Glass
- Power Wipers
- Strobe Light
- Heat and Ventilation Non-Pressurized Cab
- Flagging Equipment
- Headlights
- Turntable Positive Restraint Device
- Equipment Lite Weight Displayed
- Heat, Ventilation, Air Conditioning Pressurized Cab
- Brake Lights
- First Aid Kit

For hi-rail vehicles, the group determined that the regulations should address:

- Operator Seating
- Brakes
- Horn
- Mirrors
- Fire Extinguisher
- Safety Glass
- Power Wipers
- Heat and Ventilation Non-Pressurized Cab
- Headlights
- Equipment Lite Weight Displayed
- Brake Lights
- Change of Direction Alarm
- Strobe Light
- Flagging Equipment
- First Aid Kit

Because the regulations are meant to cover hi-rails only when they are being used as on-track vehicles, the Task Group determined that the regulations should not replace any state requirements covering hi-rail vehicles when they are used as roadway motor vehicles.

As the discussions continued over many months and the proposed rule evolved, early decisions made by the group also evolved and some changed. For example, the Category I and II designations, which helped the group early in the discussions, eventually became unnecessary as proposed requirements changed. The proposed rule reflected in this document makes the distinction between large equipment and medium-sized equipment in only two instances, making it unnecessary to maintain the designated categories for purposes of the rule.

Shunting

Early in the deliberations, the Task Group explored whether or not these proposed regulations should require that the covered track maintenance machines be non-insulated for the purpose of shunting the track circuits. Machines capable of shunting track circuits would enable a track circuit to indicate track occupancy by the machine, affording an extra measure of protection for the track crew through the signal system, as well as protection at highway-rail crossings through the activation of warning devices at crossings so equipped.

The railroad industry has struggled many years to develop a technology that would provide reliable shunting capabilities for track maintenance machines. Even heavy equipment such as rail diesel cars (RDC's) and lite locomotives do not always shunt the track circuits. The Task Group